

PROPERTY OF U.S. ARMY
THE JUDGE ADVOCATE GENERAL'S SCHOOL
LIBRARY

Dave Truminger
DDM/RECH

INTERNATIONAL REVIEW

OF THE RED CROSS



Published every two months by the
International Committee of the Red Cross
for the International Red Cross
and Red Crescent Movement



INTERNATIONAL COMMITTEE OF THE RED CROSS

- Mr. CORNELIO SOMMARUGA, Doctor of Laws of Zurich University, Doctor h.c. *rer. pol.* of Fribourg University (Switzerland), Doctor h.c. in International Relations of Minho University, Braga (Portugal), Doctor h.c. of Medicine of Bologna University (Italy), *President* (member since 1986)
- Mr. MAURICE AUBERT, Doctor of Laws, *Vice-President* (1979)
- Mr. CLAUDIO CARATSCH, Bachelor of Arts, *Vice-President* (1990)
- Mr. ULRICH MIDDENDORP, Doctor of Medicine, head of surgical department of the Cantonal Hospital, Winterthur (1973)
- Mr. RUDOLF JÄCKLI, Doctor of Sciences (1979)
- Mr. DIETRICH SCHINDLER, Doctor of Laws, Professor at the University of Zurich (1961-1973) (1980)
- Mr. HANS HAUG, Doctor of Laws, Honorary Professor at the University of St. Gallen for Business Administration, Economics, Law and Social Sciences, former President of the Swiss Red Cross (1983)
- Mr. PIERRE KELLER, Doctor of Philosophy in International Relations (Yale), banker (1984)
- Mr. ANDRÉ GHELFI, former Central Secretary and Vice-President of the Swiss Federation of Metal Workers (1985)
- Mrs. RENÉE GUISAN, General Secretary of the International "Institut de la Vie", member of the Swiss *Pro Senectute* Foundation, member of the International Association for Volunteer Effort (1986)
- Mrs. ANNE PETITPIERRE, Doctor of Laws, barrister, lecturer at Geneva Law Faculty (1987)
- Mr. PAOLO BERNASCONI, Barrister, LL. L., lecturer in economic penal law at the Universities of St. Gallen and Zurich, former Public Prosecutor at Lugano, member of the Swiss *Pro Juventute* Foundation (1987)
- Mrs. LISELOTTE KRAUS-GURNY, Doctor of Laws of Zurich University (1988)
- Mrs. SUSY BRUSCHWEILER, nurse, Director of the Bois-Cerf Nursing School in Lausanne and professor at the College of Nursing in Aarau, President of the Swiss Association of Nursing School Directors (1988)
- Mr. JACQUES FORSTER, Doctor of Economics, Director of the Institute of Development Studies in Geneva (1988)
- Mr. PIERRE LANGUETIN, Master of Economics and Social Studies, Doctor h.c. of the University of Lausanne, former President of the Governing Board of the Swiss National Bank (1988)
- Mr. JACQUES MOREILLON, Bachelor of Laws, Doctor of Political Science, Secretary General of the World Organization of the Scout Movement, former Director General at the ICRC (1988)
- Mr. MAX DAETWYLER, graduate in Economics and Social Sciences of the University of Geneva, Scholar in Residence of the International Management Institute (IMI) of Geneva (1989)
- Mr. MARCO MUMENTHALER, Doctor of Medicine, Professor of Neurology and Rector of the University of Berne (1989)
- Mr. RODOLPHE DE HALLER, M. D., former lecturer at the Faculty of Medicine of the University of Geneva, President of the Swiss Association against Tuberculosis and Lung Diseases (1991)
- Mr. DANIEL THURER, LL.M. (Cambridge) LL. D., professor at the University of Zurich (1991)
- Ms. FRANCESCA POMETTA, Bachelor of Arts, former Swiss Ambassador (1991)

EXECUTIVE BOARD

Mr. CORNELIO SOMMARUGA, *President*

Mr. CLAUDIO CARATSCH, *permanent Vice-President*

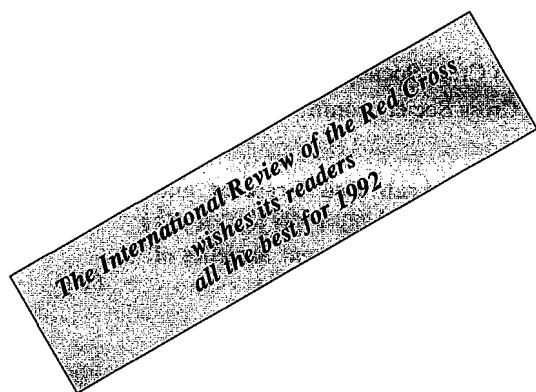
Mr. RUDOLF JÄCKLI, *member of the ICRC*

Mrs. ANNE PETITPIERRE, *member of the ICRC*

Mr. GUY DELUZ, *Director General*

Mr. JEAN DE COURTEN, *Director of Operations*

Mr. YVES SANDOZ, *Director for Principles, Law
and Relations with the Movement*



INTERNATIONAL REVIEW OF THE RED CROSS

CONTENTS

NOVEMBER-DECEMBER 1991
No. 285

Antoine Bouvier: Protection of the natural environment in time of armed conflict	567
Claude Bruderlein: Custom in international humanitarian law	579

INTERNATIONAL COMMITTEE OF THE RED CROSS

Humanitarian policy and operational activities:

Cornelio Sommaruga: The ICRC's humanitarian mandate as reflected in its work in Greece and throughout the world	596
Presidential mission: Headquarters agreement between the State of Kuwait and the ICRC	608
News from Headquarters: Elections	609
Humanitarian meetings on conflict in Yugoslavia	610

IN THE RED CROSS AND RED CRESCENT WORLD

NATIONAL RED CROSS AND RED CRESCENT SOCIETIES

Carol Duncan: 60 years of Red Cross in New Zealand	612
Anniversaries	615

Recognition of the Lithuanian Red Cross Society confirmed	615
Recognition of the Latvian Red Cross Society confirmed	616
REGIONAL CONFERENCES	
● Twenty-first Conference of the Arab Red Crescent and Red Cross Societies (Damascus, 25-27 August 1991)	617
● Ninth Conference of Red Cross and Red Crescent Societies of the Balkan Countries (Athens, 22-25 September 1991)	620
MISCELLANEOUS	
REGIONAL MEETINGS ON INTERNATIONAL HUMANITARIAN LAW	
● Regional Seminar on national measures to implement international humanitarian law (San José, Costa Rica, 18-21 June 1991)	623
● Sixteenth Round Table of the International Institute of Humanitarian Law (San Remo, 3-7 September 1991)	627
Twenty-sixth International Conference of the Red Cross and Red Crescent postponed	634
RATIFICATIONS OF AND ACCESSIONS TO THE GENEVA CONVENTIONS OF 12 AUGUST 1949 AND THEIR ADDITIONAL PROTOCOLS OF 8 JUNE 1977	
Republic of Maldives, Republic of Malawi, Brunei Darussalam, Republic of Poland, Declaration of the Republic of Hungary . . .	635
BOOKS AND REVIEWS	
Two doctoral theses on non-international conflict: <i>Der nicht internationale bewaffnete Konflikt in El Salvador (The Non-International Armed Conflict in El Salvador — The application of 1977 Protocol II additional to the 1949 Geneva Conventions)</i> (Gabriela M. Wyss) and <i>Das Recht des bewaffneten nicht internationalen Konflikts seit 1949 (The Law of Non-International Armed Conflict since 1949)</i> (Felix Rajower)	637
Los Estados de Excepción y los Derechos Humanos en América Latina (<i>States of Exception and Human Rights in Latin America</i>) (Daniel Zovatto G.)	640
Contents 1991	642
Addresses of National Red Cross and Red Crescent Societies	651

Protection of the natural environment in time of armed conflict

by Antoine Bouvier¹

"The deterrence of, and response to, environmental attacks are new dimensions to national security challenges".²

I. INTRODUCTION

Since the early 1970s, the steady deterioration of the natural environment has given rise to widespread awareness of man's destructive impact on nature.

This awareness of the vital importance for humanity of a healthy environment and the determined efforts of numerous environmental protection agencies have led over the years to the adoption of a large body of laws for the protection and preservation of the natural environment.

Concern for the environment — and the codification of rules for its preservation — first emerged at national level.

It led to the adoption of abundant legislation for the protection of the environment as such or of its various components (such as water, air and forests). Many States also adopted *constitutional* rules protecting the natural environment.³

¹ The views expressed here are those of the author alone and do not necessarily reflect those of the ICRC.

² "Conduct of the Persian Gulf conflict, an interim report to Congress", Department of Defense, Washington, July 1991, p. 11.

³ A list of the States that have introduced such rules into their constitutions can be found in Schwartz, Michelle, "Preliminary Report on Legal and Institutional Aspects of the Relationship between Human Rights and the Environment", Geneva, August 1991, p. 11.

However, States and specialized agencies realized fairly rapidly that purely national environmental policies were inadequate in view of the magnitude and the transnational nature of many environmental problems, and that it was essential to adopt *international rules*.

Environmental protection, or conservation, was therefore placed on the agenda of many institutions active in the field of international law. Their efforts have resulted in the adoption of a substantial and constantly growing body of rules, known as *international environmental law*. These rules cover a wide range of issues, including the prevention of environmental damage and the promotion of international cooperation in dealing with its effects.

It would be impossible here to examine in detail all the rules of international environmental law (which, of course, were conceived mainly for application in peacetime). We shall therefore mention only the two fundamental principles underpinning that law.

The first principle is *the obligation for States to avoid causing environmental damage beyond their borders*.

This principle has been affirmed in several legal decisions.⁴ It is also expressly mentioned in various international treaties⁵ and many other legal texts.⁶

The second principle is *the obligation for States to respect the environment in general*. Like the first principle, it is set forth in various treaties and bilateral, regional and international agreements.⁷

Environmental protection was later raised in the more specific context of *international human rights law*. It is now recognized that personal growth and happiness — fundamental human rights — cannot be achieved in a severely damaged environment.⁸ The *right to a healthy natural environment* is thus gaining increasingly wide acceptance as a fundamental human right. It is expressly provided for

⁴ See "La protection de l'environnement en temps de conflit armé", *European Communities*, Brochure 54 110/85 slnd, pp. 17-18.

⁵ See, for example, the Convention on the Law of the Sea of 10 December 1982, Art. 194, para. 2.

⁶ See, for example, Principle No. 21 of the Declaration of Stockholm adopted on 16 June 1972 by the United Nations Conference on the Human Environment. For a summary of the proceedings of the Conference, see *IRRC*, No. 141, December 1972, pp. 683 and following, and *IRRC*, No. 137, August 1972, pp. 468 and following.

⁷ For a list of these texts, see "La protection de l'environnement en temps de conflit armé", *op. cit.*, pp. 25-30.

⁸ For a more detailed discussion of this problem, see Schwartz, *op. cit.*, pp. 4-11.

in various international treaties,⁹ other legal texts and the constitutions of many States.¹⁰

At this point in our review of provisions for the protection of the environment in peacetime, it should be mentioned that environmental protection has also been a major concern of the International Red Cross and Red Crescent Movement, as demonstrated by various resolutions¹¹ and numerous studies.¹²

The emphasis placed on environmental protection during the most recent work on the codification of *international humanitarian law* (IHL) was both a natural and a logical development. It was *natural* because the trends that shape the legal rules applicable in peacetime often influence the development of the law of war, and *logical* in view of the extremely serious environmental damage caused by certain methods and means of modern warfare. Section II of this article contains a summary of the major rules of IHL for the protection of the environment in wartime.

Environmental damage in wartime is inevitable. Throughout history, war has always left its mark, sometimes extremely long-lasting, on the natural environment. Today some battlefields of the First and Second World Wars, to give only two examples, remain unfit for cultivation or dangerous to the population because of the unexploded devices (especially mines) and projectiles still embedded in the soil.¹³

The rules of IHL for the protection of the environment therefore aim not to prevent damage altogether, but rather to limit it to a level deemed tolerable. Unfortunately, there is reason to fear that the use of particularly devastating means of warfare (whose effects are often still unknown) could wreak such large-scale destruction as to render

⁹ See, for example, Art. 24 of the African Charter on Human and Peoples' Rights signed in Nairobi in June 1981, which states that: "All peoples shall have the right to a general satisfactory environment favourable to their development".

¹⁰ See note 3.

¹¹ Resolution No. XVII, 22nd International Conference, Teheran, 1973; and Resolution No. XXI, 23rd International Conference, Bucharest, 1977.

¹² See, for example, Domanska, Irena, "Red Cross and the problems of environment", *IRRC*, No. 131, February 1972, pp. 73-78; Vigne, Jacques, "The Red Cross and the human environment", *IRRC*, No. 183, June 1976, pp. 295-300; Schaar, Johan, *A Shade of Green: Environment Protection as Part of Humanitarian Action*, Henry Dunant Institute Working Paper No. 2:90, Geneva, 1990.

¹³ For more information see *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, Eds. Sandoz, Y., Swinarski, C., Zimmermann, B. Eds., ICRC, Martinus Nijhoff Publishers, Geneva, 1987, p. 410, para. 1443 and footnote 84.

illusory the protection afforded civilians under IHL. Indeed, severe environmental damage could seriously hamper or even prevent the implementation of provisions to protect the victims of armed conflict (the *wounded*, the *sick*, *prisoners of war* or *civilians*). For these reasons alone, respect for and compliance with the rules of IHL for the protection of the environment are crucial.

All these issues suddenly assumed new urgency during the conflict that set the Middle East ablaze in 1990-1991.

In the wake of that crisis, many questions were raised about the content and scope of and possible shortcomings in the rules of IHL for the protection of the environment in time of armed conflict. These questions were discussed at several meetings of experts in humanitarian law and environmental protection.¹⁴

In spite of the high level of the discussions, it proved impossible to reach any final conclusions because of the difficulty in establishing various basic data, such as a scientific assessment of the environmental damage caused by modern warfare¹⁵ and a thorough analysis of the content and limitations of the rules in force.

However, the following provisional conclusions were drawn:

- (a) the 1990-1991 Middle East conflict is too narrow a frame of reference for setting standards since environmental damage in wartime can take many forms;
- (b) certain issues should nevertheless be examined with a view to solving problems of interpretation of the rules in force and possibly filling loopholes in the law;
- (c) the rules of IHL currently in force could substantially limit environmental damage, providing they are correctly complied with and fully respected.

¹⁴ In particular, a symposium held on 3 June 1991 in London under the auspices of the *London School of Economics*, the *Centre for Defence Studies* and *Greenpeace International*, to assess the need for a fifth Geneva Convention; a meeting of experts convened in Ottawa by the Canadian government on 10-12 July 1991 and the Third Preparatory Committee of the United Nations Conference on Environment and Development (UNCED) held on 12 August - 4 September 1991.

¹⁵ Such an assessment is extremely difficult to make since environmental damage can take many forms and some of its effects are not immediately evident. For a partial assessment of the damage caused by the 1990-1991 Gulf war, see "On impact, modern warfare and the environment, a case study of the Gulf war", *Greenpeace International*, London, 1991; "Some lessons to be learned from the environmental consequences of the Arabian Gulf war", *WWF International*, May 1991 (document distributed to the Second UNCED Preparatory Committee); "Environmental assessment of the Gulf crisis", Doc. A/conf./151/PC/72, a report considered by the Third UNCED Preparatory Committee.

II. RULES OF LAW FOR THE PROTECTION OF THE ENVIRONMENT IN TIME OF ARMED CONFLICT

Most of the customary rules, treaty provisions and general principles for the protection of the environment in time of armed conflict are mentioned below, and the most important are discussed in some detail.

It should be pointed out here that, although the concept of the environment as it is understood today did not emerge until the 1970s, many of the general rules and principles of IHL (often dating much further back) contribute to protecting the environment in wartime.

A. General principles

The most important general principle of humanitarian law in the present context is the one according to which *the right of the Parties to the conflict to choose methods or means of warfare is not unlimited*. This basic principle, which was first set forth in the Declaration of St. Petersburg in 1868, has been frequently reiterated in IHL treaties, most recently in Protocol I of 1977 additional to the Geneva Conventions (Art. 35, para. 1).

The rule of *proportionality* is another basic principle of IHL which underlies many of its provisions.¹⁶ Like the first principle mentioned, it clearly applies as well to protection of the environment in time of armed conflict.¹⁷

B. Treaties affording the environment indirect protection

First of all the term “indirect protection” of the environment should be defined. Until the early 1970s IHL was “traditionally [...] anthropocentric in scope and focus”.¹⁸ Indeed, IHL texts adopted

¹⁶ See, for example, Protocol I of 1977, Art. 35, para. 2; Art. 51, para. 5(b) and Art. 57, para. 2(a) and (b).

¹⁷ On the principle of proportionality in relation to the protection of the environment in time of armed conflict, see Bothe, Michael, “War and environment”, in *Encyclopaedia of Public International Law*, Instalment 4, p. 291.

¹⁸ See “Note on the current law of armed conflict relevant to protection of the environment in conventional conflicts”, p. 1, document prepared in the Office of the Judge Advocate General, Canadian Armed Forces, and distributed to participants at the Ottawa symposium (see note 14).

before then made no reference to the environment *as such* (the concept did not even exist at the time). Nevertheless various provisions relating, for example, to *private property* or the protection of the *civilian population*, afforded the environment some protection.

Such provisions are found in many international treaties and most of them have now become customary law. As it is impossible to review all the relevant instruments here, we shall focus on the major ones.

The importance of the general principles stated in the 1868 St. Petersburg Declaration has already been mentioned. The *Hague Convention respecting the Laws and Customs of War on Land* (Convention No. IV of 1907) reaffirms and expands on those principles¹⁹. Its annexed *Regulations* contain a provision, namely, Art. 23 para. 1(g), that illustrates perfectly the aforementioned anthropocentric approach. This article, which states that it is forbidden "to destroy or seize the enemy's property, unless such destruction or seizure be imperatively demanded by the necessities of war", is one of the earliest provisions for the protection of the environment in armed conflict.

Several treaties that limit or prohibit the use of certain *means of warfare* also contribute to the protection of the environment in armed conflict. These are as follows:

- *the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases and of Bacteriological Methods of Warfare*, adopted in Geneva on 17 June 1925;
- *the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction*, adopted on 10 April 1972;
- *the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects*, adopted on 10 October 1980.

The 1980 Convention is of particular interest for at least two reasons:

¹⁹ See Art. 22 of the *Regulations* annexed to the Convention which states that: "The right of belligerents to adopt means of injuring the enemy is not unlimited".

- First of all, it sets up a mechanism whereby it may be revised or amended (Art. 8). The adoption of an additional protocol relating to the protection of the environment could therefore be envisaged.
- Secondly, certain of its provisions, in particular those concerning the use of *mines, booby-traps and other devices* (Protocol II) and *incendiary weapons* (Protocol III), contribute directly and specifically to the protection of the environment in time of armed conflict.²⁰

Another treaty, namely, the *Geneva Convention relative to the Protection of Civilian Persons in Time of War* (Fourth Convention of 12 August 1949), in particular Article 53 prohibiting the destruction of real or personal property, provides minimum protection of the environment in case of enemy occupation.

C. Treaties affording the environment specific protection

Two treaties are of major importance:

- the *Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques* (“ENMOD” Convention adopted by the United Nations on 10 December 1976);
- *Protocol I of 1977 additional to the Geneva Conventions of 1949*.

1. Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques

This Convention was adopted under United Nations auspices, largely in response to the fears aroused by the use of methods and means of warfare that caused extensive environmental damage during the Viet Nam War.²¹ It prohibits “military or any other hostile use of

²⁰ For a discussion of these provisions, see Goldblat, Jozef, “The mitigation of environmental disruption by War: Legal Approaches”, in Westing, A., (ed), *Environment hazards of war*, Oslo, London, pp. 53-55.

²¹ For more background information on this treaty and the negotiations leading up to it, see *Commentary on the Additional Protocols*, *op. cit.*, p. 413, para. 1448; and Herczegh, Geza, “La protection de l’environnement naturel et le droit humanitaire, in *Studies and essays on international humanitarian law and Red Cross principles in honour of Jean Pictet*, Swinarski, C., ed., ICRC, Martinus Nijhoff Publishers, Geneva, The Hague, 1984, p. 730.

environmental modification techniques having widespread, longlasting or severe effects as the means of destruction, damage or injury to any other State Party” (Art. 1).

The term “environmental modification techniques” refers to “any technique for changing — through the deliberate manipulation of natural processes — the dynamics, composition or structure of the Earth [...]” (Art. 2).

2. Protocol I additional to the Geneva Conventions of 1949

Protocol I contains two articles pertaining specifically to the protection of the environment in time of armed conflict.

The draft protocols submitted by the ICRC to the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts (CDDH) made no reference to the environment. The two articles in question were introduced at the Conference itself, showing the growing awareness of the importance of respect for the environment that emerged in the early 1970s.²²

- (a) *Article 35, para. 3*, stipulates that “it is prohibited to employ methods or means of warfare which are intended, or may be expected, to cause widespread, long-term and severe damage to the natural environment”.

This article, pertaining to methods and means of warfare, protects the *environment as such*.

- (b) *Article 55* provides that:

- “1. Care shall be taken in warfare to protect the natural environment against widespread, long-term and severe damage. This protection includes a prohibition of the use of methods or means of warfare which are intended or may be expected to cause such damage to the natural environment and thereby to prejudice the health or survival of the population.
2. Attacks against the natural environment by way of reprisals are prohibited”.

²² Concerning the origin and legislative background of these provisions, see Kiss, Alexander, “Les Protocoles additionnels aux Conventions de Genève de 1977 et la protection des biens de l’environnement”, *Etudes et essais sur le droit international humanitaire...*, *op. cit.*, p. 182 and following; Herczegh, p. 726 and following; Goldblat, *op. cit.*, p. 50 and following; *Commentary on the Additional Protocols*, *op. cit.*, pp. 411-412, paras. 1444-1447; and Bothe/Solf/Partsch, *New Rules for Victims of Armed Conflicts*, Martinus Nijhoff Publishers, The Hague, 1982, p. 344.

It should be noted that this article — which is intended to *protect the civilian population* against the effects of hostilities — is found within the broader context of protection of *civilian objects*, which is the subject of Part IV, Chapter III, of Protocol I (Arts. 52-56).

Article 55 does more than merely restate Article 35, para. 3. It establishes a general obligation to protect the environment during the conduct of hostilities, but that obligation is directed to the protection of civilians, whereas Article 35, para. 3, aims to protect the environment as such.²³

As a logical extension, Article 55 prohibits reprisals against the natural environment in that they would penalize humanity as a whole.

Protocol I contains further provisions contributing indirectly to environmental protection in time of conflict,²⁴ such as Articles 54 (“Protection of objects indispensable to the survival of the civilian population”) and 56 (“Protection of works and installations containing dangerous forces”).

3. Link between the provisions of Protocol I and the rules of the Convention on the prohibition of the use of environmental modification techniques (“ENMOD”)

These two treaties prohibit different types of environmental damage. While Protocol I prohibits recourse to *environmental warfare*, i.e. the use of methods of warfare likely to upset vital balances of nature, the “ENMOD” Convention prohibits what is known as *geophysical warfare*, which implies the deliberate manipulation of natural processes and may trigger “hurricanes, tidal waves, earthquakes, and rain or snow”.²⁵

Far from overlapping, these two international treaties are complementary. However, they give rise to tricky problems of interpretation stemming in particular from the fact that they attribute different

²³ On the relationship between these two articles and on their role in the Protocol as a whole, see also Herczegh, *op. cit.*, pp. 729-730; Kiss, *op. cit.*, pp. 184-186; *Commentary on the Additional Protocols*, *op. cit.*, p. 414, para. 1449 and p. 663, para. 2133; Bothe/Solf/Partsch, *op. cit.*, pp. 344-345. Our comments are also based on a report (to be published) presented on 8 June 1991 by Paul Fauteux at a symposium in Paris on the legal aspects of the Gulf crisis. We are grateful to the author for having provided us with a copy of the report.

²⁴ See Bothe, *op. cit.*, p. 292; Kiss, *op. cit.*, p. 186; *Commentary on the Additional Protocols*, *op. cit.*, pp. 630-675, paras. 1994-2183.

²⁵ See *Commentary on the Additional Protocols*, *op. cit.*, pp. 416-417, para. 1454 and pp. 412-420, paras. 1447-1462; Kiss, *op. cit.*, p. 187; and Bothe, *op. cit.*, pp. 291-292.

meanings to identical terms, such as “widespread, long-term and severe”. To give but one example of such semantic difficulties, the definition of “long-term” ranges from several months or a season for the United Nations Convention to several decades for the Protocol.²⁶

Moreover, the conditions of being widespread, long-term and severe are *cumulative* in Protocol I, whereas each condition is *sufficient* in and of itself for the “ENMOD” Convention to apply.

There is a danger that such discrepancies might hamper the implementation of these rules. It is therefore to be hoped that the work currently being carried out in the field of environmental protection in wartime (see note 14) will lead to harmonization of the two treaties.²⁷

D. Protection of the environment in situations of non-international armed conflict

Despite the obvious threat posed by situations of non-international armed conflict, none of the rules of IHL applicable to such situations provide specifically for protection of the environment. A proposal was made at the CDDH to introduce into Protocol II a provision analogous to Article 35, para. 3, and Article 55 of Protocol I, but the idea was ultimately rejected.²⁸

However, the concept of environmental protection is not totally absent from Protocol II. Article 14 (“Protection of objects indispensable to the survival of the civilian population”), which prohibits attacks against “foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works”, and Article 15, which prohibits any attack against “installations containing dangerous forces [...] if such attack may cause the release of [such] forces”, unquestionably contribute to

²⁶ See *Commentary on the Additional Protocols*, *op. cit.*, pp. 415-416, para. 1452. On these differences of terminology, see also Kiss, *op. cit.*, p. 189.

²⁷ From the purely legal point of view, harmonization should not give rise to any major problems. The terms “long-lasting, widespread and serious” were not defined in the two treaties themselves and only a very approximate indication of their meaning was given in the proceedings of the Diplomatic Conferences that led to their signature. It should therefore be possible, as concluded by the experts in Ottawa (see note 14), to reach agreement on the meaning of these terms in accordance with the general rules of the law of treaties, in particular Arts. 31 and 32 of the 1969 Vienna Convention.

²⁸ See Kiss, *op. cit.*, p. 184 and Goldblat, *op. cit.*, p. 52.

protecting the environment in time of non-international armed conflict.

III. CONCLUSION

The destructive potential of the methods and means of warfare already in use or available in the world's arsenals today represents a threat to the environment of a magnitude unprecedented in the history of humanity. Special emphasis must therefore be placed on compliance with and constant development of the rules of IHL for the protection of the environment in time of armed conflict.

Unlike certain other authors,²⁹ we are not convinced of the need at present to revise all the provisions of IHL for the protection of the environment, although this would become indispensable should new means of warfare be introduced.

Certain issues nevertheless merit detailed study. In particular, attention should be paid — as at the London and Ottawa meetings³⁰ — to protection of the environment in time of non-international armed conflict and to the formulation of rules applicable between a State party to a conflict and a State not party thereto whose natural environment may be affected by the conflict. Further thought should also be given to the suggestion put forward by some experts that nature reserves should be declared demilitarized zones in the event of conflict.³¹

It is generally agreed that the rules of IHL currently in force (see section II above) could considerably limit environmental damage in warfare, providing they are correctly applied and fully respected. Therefore, rather than initiating a new and possibly unproductive codification process, a special effort should be made to ensure that these rules are adopted by as many States as possible.

It is of paramount importance to ensure implementation³² of and

²⁹ In particular, the promoters of the London symposium on a fifth Geneva Convention (see note 14).

³⁰ See note 14.

³¹ This suggestion was made at the CDDH, but was not adopted (see Kiss, *op. cit.*, p. 191 and *Commentary on the Additional Protocols*, *op. cit.*, p. 664, paras. 2138-2139).

³² Two implementation mechanisms of IHL could prove especially useful: (a) the obligation to "respect and ensure respect for" the provisions of IHL, set forth in Art. 1 common to the four Geneva Conventions of 1949 and Protocol I of 1977; and (b) the

respect for the existing rules, so that future generations will not be faced with insurmountable problems resulting from damage caused to the environment in time of conflict.

Antoine Bouvier

Antoine Bouvier holds a law degree from Geneva University. He has been a member of the ICRC Legal Division since 1984. The *Review* has published several of his articles, including "Special aspects of the use of the red cross or red crescent emblem" (*IRRC*, No. 272, September-October 1989, pp. 438-458).

International Fact-Finding Commission provided for in Art. 90 of Protocol I and set up on 25 June 1991 (on the Commission's role see Krill, Françoise, "The International Fact-Finding Commission", *IRRC*, No. 281, March-April 1991, pp. 190-207).

Custom in international humanitarian law

by Claude Bruderlein

The purpose of this study is to analyse the normative character of custom in international humanitarian law (IHL), on the basis of the theory and jurisprudence of public international law, in order to arrive at a better understanding of the conduct of States in conflict situations. In so doing, an attempt will be made to determine the possibilities for developing custom in IHL, especially in view of the increasing concern shown by international public opinion for the plight of victims of armed conflicts. The paper will begin with a review of the questions raised by custom as an independent source of humanitarian law (point 1) and go on to take a closer look at the constituent elements of custom in humanitarian law (point 2). It will end with a comparative study of the two approaches to custom in IHL, concentrating on the consequences that the development of custom may have in the future (point 3).

1. Custom as an independent source of humanitarian law

Researchers and theorists in humanitarian law have recently been taking growing interest in the phenomenon of custom in IHL. This special attention may appear puzzling after more than a century of codification, but can be explained by a number of events. Among recent factors are the difficulties encountered in the drafting and ratification by the States of the Additional Protocols of 1977, the position of the US government in refusing to ratify Protocol I,¹ and the reservations expressed by some States, limiting the application of the Proto-

¹ On this subject, see Meron, Theodor, *Human rights and humanitarian norms as customary law*, Clarendon Press, Oxford, 1989, p. 62

cols to the use of conventional weapons.² What should be emphasized first and foremost, however, is the grave erosion in recent years of the protection afforded to victims of armed conflicts, something that represents a real challenge to those promoting humanitarian law. The factors mentioned constitute a serious obstacle to the development of humanitarian treaties.

Nevertheless, new avenues have opened to legal experts since the International Court of Justice (ICJ), in its judgment of 1986 in the *Case concerning Military and Paramilitary Activities in and against Nicaragua*, recognized customary humanitarian law as being of equal standing with treaty law. According to Article 38, para. 1b, of the Court's Statute, custom is a system of norms based on general State practice and accepted as law.³ This independent source of legal rules, now recognized as such by the Court in IHL, opens up new prospects for the development of humanitarian law. Thus, any practice conforming to the general principles of humanitarian law and encouraged and supported by the promoters of that law, namely, international public opinion and the humanitarian organizations, may acquire the status of a rule of customary law and consequently be binding on all States in all circumstances. This demonstrates the importance of the Court's decision for those whose business it is to promote humanitarian law. Customary IHL therefore represents an alternative to treaty law, complementing or even replacing it in spheres where no adequate rules have been established by treaty; it takes advantage of the support of international public opinion and of the humanitarian agencies to broaden and consolidate the humanitarian objectives of IHL. Without calling into question the normative value of the provisions of treaty law, customary humanitarian law demonstrates the influence of international public opinion on the practice of States in conflict. However, there is a corollary to this approach. The study of customary law can

² A number of States expressed this reservation, known as the "NATO reservation", among them Italy, Belgium and the Netherlands. France, in its declaration accompanying its instrument of accession to Protocol II, notified its intention of not acceding to Protocol I because of "the lack of consensus among the States signatory to Protocol I with regard to the precise extent of the obligations incurred by them in the matter of deterrence". See *Protocols of 8 June 1977 additional to the Geneva Conventions of 12 August 1949—Reservations, declarations and communications made at the time of or in reference to ratification or accession, as at 30 June 1990*, ICRC, Geneva (DDM/JUR 90/802—PRV 4), duplicated. It should be noted, however, that the Soviet Union, when it ratified Protocols I and II on 29 September 1989, made no reservations (see *International Review of the Red Cross*, No. 273, November-December 1989, pp. 591-592).

³ *Charter of the United Nations and Statute of the International Court of Justice*, United Nations, New York, 1979, p. 76.

obviously lead to the enlargement of the field of application, both personal and material, of treaty law, for example by making a treaty obligation binding on States not party to the legal instruments, or by extending the application of such an obligation to situations not covered by the treaties. Yet the quest for customary rules may involve the danger that questionable practices in the humanitarian context, for example in areas not covered by the humanitarian treaties, may be recognized as customary law because they fulfil the conditions for recognition as laid down in public international law. However, the plight of victims of armed conflicts today is such that legal experts are duty bound to make every effort to find ways of increasing respect for the principles of humanitarian law, even if in so doing they are obliged to take a stand concerning the practice of States in conflict.

We know that custom is the widespread repetition, in a uniform way and over a long period, of a specific type of conduct (*repetitio facti*), in the belief that such conduct is obligatory (*opinio juris sive necessitatis*). It is a series of successive acts which gradually become common practice, observed in good faith and finally respected by all.⁴ In the law of armed conflict it preceded, sometimes by thousands of years, the written rules, as in cases such as parley and truce. However, owing to its imprecise nature and spontaneous origin, it puzzles legal experts, trained in the discipline of written law. If the law is defined as an organized method of producing normative acts, then international customary law appears as a norm without an act, difficult to grasp, emerging continually from social circumstances within the community of States, at times even in apparent contradiction to the legal order established by treaties. It has a positive quality, since it is recognized by those in a position to endow it with a certain force of application. Emanating as it does from society, customary law is completely dependent on society for the definition of its compulsory nature. It is, in fact, impossible to embody in a written standard the normative character of a customary rule, so that no one is able to determine exactly the material content of customary IHL. Customary law has no authoritative basis in a formal document of international scope, such as the humanitarian conventions: its compulsory character is anchored deep in the decision-making processes of the State, in the feeling that “humanitarian” practice is consistent with the law. Definition of the material content of customary rules therefore depends on the way in which States

⁴ Verri, Pietro, *Dictionnaire du droit international des conflits armés*, ICRC, Geneva, 1988, p. 39.

interpret their practices, this interpretation being shaped by international public opinion and the views of bodies such as the ICRC.

The distinction between customary law and treaty law has long been accepted in IHL. The “Martens clause”, contained in the preamble to The Hague Conventions of 1907, inspired the provisions of the article common to all four 1949 Geneva Conventions which relates to denunciation of the Conventions (Articles 63, 62, 142 and 158 of the First, Second, Third and Fourth Conventions respectively):

“[Denunciation] shall in no way impair the obligations which the Parties to the conflict shall remain bound to fulfil by virtue of the principles of the law of nations, as they result from the usages established among civilized peoples, from the laws of humanity and the dictates of the public conscience”.⁵

In these instruments, customary law retains a subsidiary character in comparison with treaty law. It appears that international legislators at the time found it difficult to accept that customary law could have the same status as treaty law. It was only as a last resort, in the hypothetical case of States deciding to denounce their treaty obligations, that other sources of humanitarian law could be considered.⁶ Moreover, the States prohibited the conclusion of special agreements that would restrict the protection provided under the Conventions (Articles 6, 6, 6 and 7 of the four Geneva Conventions of 1949), with the specific purpose of maintaining the authority of multilateral conventions. In so doing, they wished to prevent States that no longer had full freedom of action from signing agreements making exceptions or reservations, which would soon erode the minimum guarantees afforded by the Conventions.⁷ Since then, the perception of customary law has considerably evolved. The Additional Protocols of 1977 do not include the clause relating to denunciation, the High Contracting Parties being

⁵ The Geneva Conventions of 12 August 1949 (reprint), ICRC, Geneva, 1986.

⁶ *The Geneva Conventions of August 12, 1949 - Commentary*, published under the general editorship of Jean S. Pictet; I (First Convention), ICRC, Geneva, 1952, p. 413. Pictet points out that a State that denounces one of the Conventions nevertheless remains bound by the principles contained in it insofar as they are the expression of customary international law.

⁷ According to Pictet, this prohibition is of paramount importance for the application of the provisions contained in the Conventions. This limitation of the contractual freedom of the States, which conflicts with the idea of the sovereignty of States, is consistent with the deepest nature of the Conventions, even if, as the British delegation pointed out at the Conference of Governmental Experts in 1947, it entailed the risk of the Conventions being more frequently violated. Pictet, *op.cit.*, p. 72.

subject directly to the provisions of Article 43 of the Vienna Convention of 1969 on the Law of Treaties:

*"[Denunciation] shall not in any way impair the duty of any State to fulfil any obligation embodied in the treaty to which it is subject under any other rule of international law".*⁸

In the *Case concerning Military and Paramilitary Activities in and against Nicaragua*, the ICJ indeed stressed the independent existence of the two sources of law and their distinct character, stating that:

*"even if two norms belonging to two sources of international law appear identical in content, and even if the States in question are bound by these rules both on the level of treaty law and on that of customary international law, these norms retain a separate existence.... [They] are also distinguishable by reference to the methods of interpretation and application".*⁹

This promotion of customary law to the rank of a source of humanitarian law has raised numerous problems, as the quest for the constituent elements of custom in fact gives the States considerable leeway in interpretation. A great deal is at stake, since the definition of the constituent elements must be such as to give a definite meaning to custom as part of humanitarian law, yet without denying the legal and moral authority of treaty law. The undertaking is especially exacting in view of the discrepancy between the current usage of some States engaged in conflict and the treaty law in force. Unless it is carried out with great caution, one runs the risk of encouraging the development of customs that set rules aside and of preventing any remoulding of humanitarian law. The difficulty of defining the constituent elements of customary law, incidentally, very clearly confronted the ICJ in its judgment of 1986, quoted above. The Court was called on in that case to give judgment on the customary nature of certain provisions of the Geneva Conventions in the light of the reservation attached by the US government to its acceptance of the compulsory jurisdiction of the Court within the meaning of Article 36, para. 2, of the ICJ's Statute.¹⁰

⁸ Rosenne, Shabtai, *The law of treaties. A guide to the legislative history of the Vienna Convention*, A.W. Sijthoff/Oceana Publications, Leyden/Dobbs Ferry, 1970, p. 254.

⁹ International Court of Justice (ICJ), *Reports of judgments*, 1986, p. 95, para. 178.

¹⁰ Article 36, para. 2, of the Statute of the ICJ establishes voluntary compulsory jurisdiction. This rule authorizes the Court to give judgment on all legal matters presented to it as long as the parties have declared that they recognize the Court's compulsory jurisdiction. *Statute of the International Court of Justice, op.cit.*, p. 74.

The United States had reserved assent to the Court's jurisdiction in all cases arising from obligations contained in a multilateral treaty, unless all parties to the latter had stated that they accepted the compulsory jurisdiction of the ICJ. According to the US government, the reservation in question also had the effect of preventing the Court from applying any rule of customary international law of which the content was similar to the said treaty obligations.¹¹ In the case in point, the reservation applied to obligations under the humanitarian treaties. If the ICJ appeared not to be competent to give judgment on violations of humanitarian treaty law, it did not hesitate to affirm its jurisdiction over complaints relating to general (or customary) international law, even though the content of the latter might be identical to the norms of treaty law.¹² The Court stated:

*"Article 3 which is common to all four Geneva Conventions of 12 August 1949 defines certain rules to be applied in the armed conflicts of a non-international character.... [T]hey are rules which, in the Court's opinion, reflect what the Court in 1949 called 'elementary considerations of humanity'.... The Court may therefore find them applicable to the present dispute, and is thus not required to decide what role the United States multilateral treaty reservation might otherwise play...."*¹³

Acknowledgement of the parallel existence of custom as an independent source of humanitarian law allowed the ICJ to bypass the American reservation but, offsetting this, obliged the Court to make a decision on the content of customary IHL. As in the *Corfu Channel Case*,¹⁴ another occasion on which it had invoked "elementary considerations of humanity", the Court, rather than examining the constituent elements of customs in force, went back to general principles of humanitarian law that would appear to be directly applicable. The Court considered that:

"the conduct of the United States may be judged according to the fundamental principles of humanitarian law.... [T]he Geneva Conventions are in some respects a development, and in other respects no more than the expression, of such principles".¹⁵

¹¹ ICJ, *Reports of judgments*, 1984, pp. 424, 425, para. 73.

¹² ICJ, *Reports of judgments*, 1986, p. 93, para. 173, and p. 96, para. 179.

¹³ ICJ, *Reports of judgments*, 1986, p. 114, para. 218.

¹⁴ ICJ, *Reports of judgments*, 1949, p. 22.

¹⁵ ICJ, *Reports of judgments*, 1986, p. 113, para. 218.

This equating of general principles with custom is extremely unfortunate. It should be pointed out that the judges brought in the concept of “elementary considerations of humanity” solely in the sphere of law of armed conflicts. Yet there can be no misapprehension: the general principles of humanitarian law must underlie all rules of IHL, whether treaty law or customary law. If the Court found that it was unable to apply treaty law, the only valid course was to refer to the general principles of customary humanitarian law, i.e., indirectly to custom. The material content of the “elementary considerations” must be sought in customary humanitarian law if it is to acquire any legal value; and this the judges did not do. No doubt they wished to refer to the customary content of humanitarian law but, in the absence of principles and jurisprudence to guide their proceedings, they refrained from seeking its constituent elements for fear of entering into political and philosophical matters outside their mandate. They preferred to consider that acts that offended human dignity necessarily offended against a norm of customary international law, with no thought for the legal void that they were leaving behind them. The Court’s circumspection was greatly facilitated by the almost universal ratification of the 1949 Geneva Conventions. It therefore linked the treaty law of 1949 with custom on the basis of their common characteristic of universality, while avoiding examination of the specific material content of custom in humanitarian law. The Court was quite right not to consider in the same way the provisions of the Additional Protocols of 1977, which have not enjoyed the same reception from the community of States. Although creating an opening for research in the field of customary humanitarian law, the ICJ has caused some confusion in the approach to custom in IHL. Its failure to establish the presence of the constituent elements of custom has made it risky to define them and requires researchers henceforth to show the greatest rigour in analysing the phenomenon of custom in order to identify those constituent elements and to develop legal instruments with at least some legitimacy.

2. The constituent elements of custom in international humanitarian law

(a) The general practice of States

General practice is the material element of custom. It is composed of all actions of the subjects of international law. These actions correspond to legal acts, whether internal or international, performed or

ordered by States but also by international organizations, international jurisdictions or humanitarian institutions such as the International Committee of the Red Cross.¹⁶ According to the ICJ, the practice of subjects of international law must be “constant and uniform”; the repetition of certain acts over a period of time establishes them as the “usage” of the international community.¹⁷ The practice, moreover, must not be that of a single State, but must be sufficiently widespread within the international community. Article 38, para. 1b, of the Statute of the ICJ refers explicitly to the “general” practice of States, which does not mean “unanimous”. In the *North Sea Continental Shelf cases*, the ICJ gave as its opinion:

“With respect to the other elements usually regarded as necessary before a conventional rule can be considered to have become a general rule of international law ... a very widespread and representative participation in the convention might suffice of itself, provided it included that of States whose interests were specially affected”.¹⁸

Qualitatively, the practice of the States need not be absolutely uniform. In its judgment in the *Case concerning Military and Paramilitary Activities in and against Nicaragua*, the ICJ did not consider that

“for a rule to be established as customary, the corresponding practice must be in absolutely rigorous conformity with the rule. In order to deduce the existence of customary rules, the Court deems it sufficient that the conduct of States should, in general, be consistent with such rules, and that instances of State conduct inconsistent with a given rule should generally have been treated as breaches of that rule, not as indications of the recognition of a new rule”.¹⁹

¹⁶ Pellet, A., in Nguyen Quoc, D., Daillier, P. and Pellet, A., *Droit international public* (3rd ed.). Librairie générale de droit et de jurisprudence, Paris, 1987, p. 297, para. 213; the practice of the ICRC as a non-governmental organization may create a degree of custom in the rules governing the action taken by the Red Cross in the event of armed conflict. See also Gasser, Hans-Peter, on the normative function of the ICRC's appeals in favour of civilians, in “Armed conflict within the territory of a State”, in *Festschrift für Dietrich Schindler*, Helbing and Lichtenhahn, Basel, 1989, p. 234. Concerning the legal status of the ICRC in international law, see Dominicé, Christian, “La personnalité juridique internationale du CICR”, in *Studies and essays on international humanitarian law and Red Cross principles, in honour of Jean Pictet*, Christophe Swinarski, ed., ICRC/Martinus Nijhoff Publishers, Geneva/The Hague, 1984, pp. 663-674.

¹⁷ ICJ, *Reports of judgments* 1960, p. 40, *Case concerning Passage over Indian Territory*.

¹⁸ ICJ, *Reports of judgments* 1969, p. 42.

¹⁹ ICJ, *Reports of judgments* 1986, p. 98, para. 186.

The general practice of States can be subdivided into several types of conduct. Some selection is necessary to identify customs that will obviously be peculiar to each of these types of conduct. We may define three categories of conduct that make up the practice of humanitarian law; each category is associated with one area of a State's activities in the law of armed conflict. Military practice comprises all acts of subjects of international law in applying the rules of IHL under domestic law, ranging from the introduction into domestic law of suitable regulations (e.g., military manuals) to application of the rules in a specific situation (e.g., treatment of prisoners of war, prosecution of breaches of IHL). Diplomatic practice is, among other things, a response to the States' obligation to "respect and ensure respect for" the provisions of the 1949 Geneva Conventions and of Protocol I of 1977 (Article 1 common to the four Geneva Conventions, and Article 1, para. 1, of Protocol I). It includes all forms of pressure employed by States to induce other members of the international community to meet their obligations under humanitarian law. Finally, legislative practice consists in the overall conduct of States in their role as international legislators, whether in ratifying or acceding to an instrument of treaty law or, more occasionally, in drafting new provisions of IHL.

(b) *Opinio juris sive necessitatis*

Practice as such is not sufficient to establish a customary rule: it must be accompanied by the State's belief that it is complying with an international obligation. This feeling on the part of the State constitutes the subjective element of custom, and distinguishes custom from usage and from international courtesy. Yet it is difficult to determine which element comes first. Must practice precede the State's belief, or should that belief give rise to practice? In an armed conflict, a humanitarian practice is unlikely to develop unilaterally, providing a basis for the States' belief that such a practice is obligatory. Nevertheless, international public opinion and bodies such as the ICRC can persuade States in conflict to develop a certain type of humanitarian practice which, in the medium term, will become obligatory in the view of all members of the international community. In the *North Sea Continental Shelf cases*, the ICJ stated:

"Not only must the acts concerned amount to a settled practice, but they must also be such, or be carried out in such a way, as to be evidence of a belief that this practice is rendered obligatory by the

*existence of a rule of law The States concerned must therefore feel that they are conforming to what amounts to a legal obligation".*²⁰

The guarantee of respect for the obligatory nature of humanitarian law therefore no longer rests solely on the formal nature of treaty law, but is based also on the political character of the "humanitarian" conviction in the formation process of custom: the "crystallization" of custom is accomplished through the recognition of these humanitarian practices by humanitarian bodies and the media and by spreading knowledge of them among the States and in international public opinion.

3. Analysis of the phenomenon of custom in humanitarian law

(a) Statement of the problem

Custom, as a legal phenomenon, embraces the legal, political and ethical aspects of today's international society. In our legal approach to custom, we have noted that it is not easy to place it within the system of international law. The same is true in other areas of international relations. From the political standpoint, custom is a challenge to the experts, who are unable to define the origin of the normative authority of customary rules accepted by the States. Custom appears to them as a system of principles underlying the very concept of international relations, and therefore outside the scope of study of international politics. On the moral and ethical plane, custom in IHL, by making compromises with military necessity, reveals the failure of our legal and political systems to fulfil their role of regulating the behaviour of States in exceptional situations. In erecting this complicated and ambiguous legal structure, the community of States has created a model of armed conflict that it regards as acceptable in humanitarian terms. Gustave Moynier wrote, after the first Geneva Convention was signed in 1864: "Civilized nations try to make war more humane, recognizing by so doing that not all acts of war are lawful".²¹ However, it must be remembered

²⁰ ICJ, *Reports of judgments* 1969, p. 44, para. 77.

²¹ Boissier, Pierre, *History of the International Committee of the Red Cross: From Solferino to Tsushima*, Henry Dunant Institute, Geneva, p. 120.

that this legal structure of conventions, by giving the same weight to military necessity and to humanitarian considerations, has no real legitimacy except for the community of States at peace, i.e., those who created the law of Geneva: it does not directly serve the vital interests of the belligerents or those, no less vital, of the victims of armed conflicts who are inevitably the losers in this "humanitarian" compromise.

Custom, as a model of conduct, lies at the point of intersection of the various approaches, none of which, unless aided by other disciplines, is able to grasp the meaning of State conduct in a conflict. Custom, the *lex lata* of IHL, requires for an understanding of its operation a multidisciplinary approach that can apprehend and analyse the forces making up its background and consequently its obligatory nature. The source of obligatory custom, its incorporation into the international legal order and its moral value remain indissolubly associated in IHL. It must be admitted that research into custom testifies to the international community's dissatisfaction with treaty norms in international law. It is an attempt to establish a new consensus of States that will be more flexible than heretofore, and that will strengthen the international legal system. Two different approaches to custom are currently in the process of establishing an extensive list of customary rules in IHL.²² This research into custom takes on a political hue, according to whether treaty law is seen as a standard to be safeguarded or whether customary law is seen as a new standard to be recognized. The first, or "normative", approach proceeds by extrapolating—or generalizing—the normative content of treaty law to cover custom, concentrating almost exclusively on the subjective nature of the latter (*opinio juris*). The second, or "systematic", approach proceeds via systematic recognition of the general practice of the States before making any analysis of the subjective nature of custom.

²² For the customary content of the Fourth Geneva Convention of 1949 (Protection of civilian persons in time of war), see Meron, Theodor, *op.cit.*, pp. 46-50; also "The Geneva Conventions as customary law" by the same author, in *The American Journal of International Law*, 1987, pp. 348-370. For the customary content of Protocol I (humanitarian law applicable in international armed conflicts), see Penna, L.R., "Customary international law and Protocol I", in *Studies and Essays... in honour of Jean Pictet*, *op.cit.*, pp. 201-225. For the customary content of Protocol II (humanitarian law applicable in non-international armed conflicts), see Gasser, *op.cit.*, pp. 225-240. For the customary law contained in Protocols I and II, see also Cassese, Antonio, "The Geneva Protocols of 1977 on the humanitarian law of armed conflict and customary international law", in *UCLA Pacific Basin Law Journal*, Spring and Fall 1984, Vol. 3, Nos. 1 and 2, pp. 55-118.

(b) The normative approach

Although treaty law may have lost some of its authority in comparison with customary norms, some consider it to have retained all its relevance for determining the ideal content of the rules of humanitarian law. It derives from the will of the States and, as such, represents the ultimate objective of the international community. This approach tends to conserve as much as possible of the treaty content of humanitarian law as it develops into custom. It proposes to perceive custom only through the material content of treaty law. Degan's view is that the four Geneva Conventions of 1949 and their two additional Protocols of 1977, which codified and progressively developed IHL, are "*the most important mode of intentional articulation and accelerating of customary process after the Second World War*".²³ The instruments of IHL thus have a double function: like other agreements, they impose obligations on the parties by virtue of a treaty; yet, because of their moral content and, in particular, because of the obligation contained in Article 1 of the four Geneva Conventions and of Protocol I, enjoining the States "to ensure respect" for the provisions in those instruments "in all circumstances", their main function would seem to be to influence the development of customary law.²⁴ Indeed, the basic provisions of the Conventions and of Protocol I are so worded as to confer rights and impose obligations on all States, whether or not they are party to the treaties in question. According to this school of thought, treaty law should serve as a support to research into custom, since it is the only form of law containing rules that can be defined and accepted by the States. It thus becomes the central element in research into custom, the basis for recognizing the practice of States. Such practice may have existed before the treaty which codifies or "crystallizes" a norm in the process of formation; it may also come into existence after the treaty, in which case the treaty is said to be the generator of custom. This extrapolation of the legislative will of the States to cover custom obviously neglects all the "extra-conventional" practices of States, as well as any customs that nullify treaty law. It limits the authority of custom to the formal treaty framework which

²³ Degan, V.D., "Two modes of generating customary rules of general international law", in *Jugoslavenska Revija za medunarodno Praz*, Belgrade, 1988, No. 1, p. 23.

²⁴ See especially Condorelli, Luigi and Boisson de Chazournes, Laurence, "Quelques remarques à propos de l'obligation des Etats à respecter et faire respecter le droit international humanitaire 'en toutes circonstances'", in "*Studies and Essays... in honour of Jean Pictet, op.cit.*", pp. 26, 27.

results from the legislative will of the States and which it cannot exceed or seek to modify. The texts codifying IHL act as the sole “material source” of customary rules.²⁵ In codifying a customary practice, the States express their intention of indicating the existence of a customary norm. Consequently, the interpreter is justified in basing his proof of customary law on this appreciation of the “codifiers”, presuming that State practice has been correctly established and defined within the framework of the process of codification and that there is no need to re-examine the interpretation given.²⁶ The same principle applies to custom generated by treaty law. The belief in the basically normative character of a treaty provision is expressed in the text of the convention. Once this has been ratified by a sufficient number of representative States it provides, according to Torrione, adequate grounds for demonstrating the existence of custom.²⁷ Those who favour this approach base their interpretation of practice as perceived by the codifying States on the entire history of codification of the law of armed conflict, including the 1907 Hague Conventions, and on the positions taken by States during conferences on codification. This supplies them with a wide range of convention-based norms from which may be deduced States’ belief regarding custom in force and to come.

However, research into custom via treaty law draws a subtle distinction between treaty rules that are reflected in custom and those that are not. This raises the problem of the legal validity of treaty law. In wishing to avoid examination of the basis of custom, for fear of giving State practice a normative character of its own, the normative approach indirectly calls into question the validity of the whole body of treaty law. Consequently, it is doubtful whether such a distinction is relevant in humanitarian law. As we have seen, the very structure and purpose of the humanitarian conventions destine their content for general recognition. The legal nature of the norms of humanitarian law is therefore derived as much from the agreement of the States as from their generally applicable content. The normative approach thus makes a large part of treaty law obsolete, since it is regarded as having failed in its mission of becoming general international law. This approach is unable to solve the problem of defining custom without descending to the subjectivity of the political will of the codifying States, which do

²⁵ Torrione, H., *Influence des conventions de codification sur la coutume en droit international public*, Editions universitaires de Fribourg, Fribourg, 1989, p. 77.

²⁶ *Ibid.*, p. 301.

²⁷ *Ibid.*, p. 302.

not hesitate subsequently to question the normative character of a standard that they have themselves decreed.

Moreover, by concentrating on treaty law to determine the content of customary law, this approach conceals one of the most dynamic aspects of custom: its ability to abrogate laws and to create new ones. Dupuy²⁸ considers that custom has two principal functions. Its first function is to create new law. It spreads in a homogeneous society and confers on it a degree of public order. In this aspect it expresses a system of ethics that is common to all or simply transcends formal consensus. Its second function is to review existing law. Recognition of custom is a way of abolishing norms that have become obsolete and thus making clear what is positive law in the whole body of rules in force. This author states that the law of armed conflict is the favoured area for creating and abolishing rules by virtue of custom.²⁹ Practice contrary to treaty provisions obviously poses a problem for experts in humanitarian law, especially if, from the normative viewpoint, such provisions are candidates for the status of customary humanitarian law. Logically, under treaty law, a practice that is contrary to the norm does not affect the latter's legal force, which derives solely from the formal process of drafting and adoption by the members of the international community. Nevertheless, in the general theory of law, the actual practice of States, in all its aspects, lies at the heart of the process of forming custom, the *opinio juris* establishing the practice in question as a source of law. If a State considers that the acts of another State are encroaching in some way on its rights, it may make a protest in order to prevent such acts from eventually having legal consequences. In so doing, it manifests its refusal to regard this practice as being law.³⁰ According to the ICJ,³¹ any protest by States following the violation of a rule of law must, to be valid, be repeated and followed by decisive acts, ranging from appeal to an international organization and a hearing in an international court to the breaking off of trade or even diplomatic relations. While the protest has the result

²⁸ Dupuy, E.J., "Coutume sage et coutume sauvage", in *Mélanges Rousseau*, Pédone, Paris, 1974, pp. 75-87.

²⁹ *Ibid.*, pp. 81, 82.

³⁰ Cahin, P., "Le comportement des Etats comme source de droit et d'obligations", in *Recueil d'études de droit international en hommage à Paul Guggenheim*, Faculty of Law, University of Geneva/Graduate Institute of International Studies, Geneva, 1968, p. 250.

³¹ ICJ, *Reports of judgments* 1953, pp. 106, 107, *The Minquiers and Ecrehos case*.

of blocking the claims of the State responsible for the breach, it must be admitted on the other hand that, if the States whose interests have been infringed fail to take action, after a time they may be held responsible for the existing situation, which their conduct has helped create. Hence the importance of the pressure exerted by international public opinion and by the humanitarian agencies on the States' interpretation in cases of breaches of the provisions of IHL.

(c) Systematic approach

Despite appearances to the contrary, attributable to the highly visible nature of violations, most of the fundamental rules of humanitarian law are respected in the States' military practice.³² If this were not so, there would be no point in studying the legal aspects of humanitarian treaty law or customary law. Every time a military unit spares the life of a civilian in the course of its operations, the obligation to protect the civilian population has been met. For obvious reasons, it is difficult to assemble a sufficient body of proof that such conduct conforming to humanitarian law is motivated by belief in the law rather than in "morality". The systematic approach to custom differs radically from the previous approach in its attitude toward the legislative will of the States. According to Malenovsky,³³ any State that plays a part in shaping customary practice should be seen as having its own motives and special aims connected with the actual context of armed conflict, which is fundamentally different from all other situations. The acts of States correspond to specific interests that are far more pressing than most objectives of their legislative policy. The weakness of the normative approach to custom lies in the fact that it analyses the content of custom solely from the viewpoint of the codifying State. Cheng³⁴ points out that the legal framework in which the rules of international law are formulated is completely different depending on whether they derive from custom or from treaty law. This author does not consider that treaty law is capable of simply being "generalized", since the States, when complying with a treaty obligation, do not have the feeling that they are creating general law,

³² Gasser, *op.cit.*, p. 232.

³³ Malenovsky, J., "Are necessary changes of methods of ascertaining customary rules in international law?", in *Acta Universitatis Wratislaviensis*, Note 983, Wrocław, 1988, p. 208.

³⁴ Cheng, B., "Custom: the future of general State practice in a divided world", in *The structure and process of international law* (Macdonald, R. St. J. and Johnston, Douglas M., eds.), Martinus Nijhoff Publishers, Dordrecht, 1986, p. 530.

only that they are observing treaty law. The voluntarist component inherent in treaty law should not therefore be transposed to customary law, to avoid making grave mistakes in determining the true content of custom. In IHL this position implies that treaty provisions cannot directly establish the existence of a customary rule. Consideration of the circumstances that gave birth to the customary rule is essential for understanding what determines a State's subjection to a general obligation. The source of the obligation is to be found more in the circumstances of the State, which it is necessary to scrutinize, than in the will of the State as fixed in treaty provisions dating sometimes from over a century before. For this approach, research into custom through treaty law is too static to apprehend the essentials.

4. Conclusion

The interpenetration of law and politics in international law appears very clearly in this context, and custom in humanitarian law serves as a cogent reminder. It lies at the meeting-point of social forces and political theory.³⁵ The question obviously arises as to whether the conduct of States should be interpreted from the standpoint of customary law, derived from the practice of States in conflict, or from the standpoint of treaty law, the product of the "humanitarian" compromise made by States at peace. Yet these two sources of law should not be regarded as competing. It is possible to steer the development of customary law in the direction of treaty law, simply by working to strengthen its provisions. The legal expert is consequently faced with a choice: he may either leave it to the States of the world community to legislate for the protection of victims of armed conflicts in accordance with their own interests, or he may "take the side" of the victims and militate in favour of strengthening humanitarian law through the development of customary law. The development of customary humanitarian law will depend on a profound change in the power structure of the international community regarding the protection of the basic rights of the individual. The study of its content postulates a thorough knowledge of the political, social and economic interests surrounding the matter. In this context, international public opinion and humanitarian institutions such as the ICRC have a major role to play. On the one hand, they must be capable of exerting

³⁵ Dupuy, *op.cit.*, p. 85.

constant pressure on States in exceptional situations to respect the fundamental rights of victims of armed conflicts, while spreading knowledge of the practice thus established among the other members of the international community and the general public. Meron³⁶ says: *"Public opinion abhorring the excesses ... may act as a catalyst for determinations by third States that such practices are not only immoral, but also illegal.... [This] will aid in the formation of opinio juris and customary rules for the humanization of such wars"*. The humanitarian agencies and public opinion should respond to the invitation thus proffered to them. Custom has become much more than a system of norms governing the conduct of States in conflict: it provides a unique opportunity for all concerned to take an active part in the development of humanitarian law.

Claude Bruderlein

Claude Bruderlein is an ICRC delegate in Jerusalem, where he is in charge of visits to security detainees. Mr. Bruderlein holds a degree in economics and political science from McGill University and a law degree from the University of Geneva. He took part in the IHL seminar in Warsaw in 1987 and in the courses of the Academy of International Law in The Hague (1990). In 1988 he joined the Henry Dunant Institute, where he was active in a number of research projects. The present article was written with guidance from the Henry Dunant Institute.

³⁶ Meron, *op.cit.*, p. 74.

HUMANITARIAN POLICY AND OPERATIONAL ACTIVITIES

**The ICRC's humanitarian mandate
as reflected in its work in Greece
and throughout the world**

In May 1991, Mr. Cornelio Sommaruga, President of the ICRC, spent some time in Greece at the invitation of the Hellenic Red Cross (see IRRC, No. 283, July-August 1991). While there, he was asked by the Jean-Gabriel Eynard Greek-Swiss League to give a lecture in connection with the 700th anniversary of the founding of the Swiss Confederation. The subject of the lecture was "The ICRC's humanitarian mandate as reflected in the light of its activities in Greece and throughout the world". The President's purpose was to remind his hearers of the work done in Greece by Swiss delegates of the ICRC, who might be regarded as "humanitarian Hellenists", and, in his words, "to retrace some stages in the journey made by the International Committee of the Red Cross in company with the Hellenes, in order to throw light on certain aspects of the beautiful and difficult mission of the Red Cross".

The Review is pleased to publish this article based on his lecture.

* * *

In every human being there is something that gives rise to compassion for fellow beings who are suffering and a desire to help those in distress. Is it an instinct, a feeling, a virtue, a divine inspiration? Philosophers and prophets have tried to elevate the human race to this higher ideal, which they call philanthropy, charity, humanity or solidarity.

1. Humanity, impartiality, neutrality, independence

This quality or, if you prefer, this motivation, has been adopted by the International Red Cross and Red Crescent Movement as its first principle and given the name of humanity. Humanity is the impulsion which prompts the men and women of the Red Cross and the Red Crescent to prevent and alleviate human suffering. It was from the intense compassion felt by a man from Geneva, Henry Dunant, for tens of thousands of wounded soldiers suffering untended on a battlefield in Italy, and from the help he organized to relieve this suffering, that the idea of the Red Cross was born.

Dunant realized that if war casualties were to be given effective aid, two conditions had to be fulfilled: the help must be provided by people who were well trained and motivated by a feeling of humanity; and the wounded must be protected against the effects of the fighting in order to be able to receive care, as must those tending them.

Henry Dunant's idea was tremendously successful: within a few years, almost all the countries of Europe had a National Red Cross Society (that of Greece was founded in 1877) and almost all the countries of Europe had signed the Geneva Convention of 1864 for the Amelioration of the Condition of the Wounded in Armies in the Field (Greece acceded to the Convention in 1865). Created as auxiliaries to the medical services of the armed forces, the National Red Cross Societies soon became aware that suffering existed not only in wartime but also had to be combatted in time of peace, in natural disasters, epidemics and other adversities. Today, 148 National Red Cross and Red Crescent Societies are active throughout the world not only in relieving suffering but also in preventing it and in providing training in a number of fields.

The International Committee of the Red Cross originated as a committee of five Genevese men gathered together by Henry Dunant to promote the establishment of Red Cross Societies and to bring the Geneva Convention into being. Naturally enough, the Committee has continued and even broadened its activities. When a conflict breaks out, the ICRC sends its delegates to the area to assess the humanitarian problems and to seek practical solutions, whilst advising Red Cross Societies, rallying international aid and acting as intermediaries between the Parties to the conflict in order to carry out specific humanitarian operations.

The presence of ICRC delegates on the battlefields of the world and their experience of the manifold suffering of the victims of war have led the ICRC, in persistent approaches to States, to call for the continuous development of international humanitarian law, first codified in the Geneva Convention of 1864. Thus, in the first half of this century, protection for the wounded in armies in the field, embodied in international humanitarian law, was extended to shipwrecked members of the armed forces and to prisoners of war.

The Geneva Conventions, which are texts of international law, are not a law imposed on States, but a treaty under which States have made commitments. This means that the law does not set up any supranational police force or courts for the purpose of prosecuting breaches, nor does it introduce sanctions if the law is not respected. In the absence of any instrument capable of repressing violations of the law, the International Committee has progressively assumed the role of custodian and implementing instrument of humanitarian law: it takes any humanitarian initiatives that it considers appropriate or necessary by offering its services to Parties to a conflict, and does its best to reach and assist the victims of armed conflicts.

The international community has placed in the ICRC a trust that is amply demonstrated by the Parties to a conflict when they allow ICRC delegates to carry out their mission, and by donors who provide the material and financial resources enabling the ICRC to perform its humanitarian operations. Another proof of this trust came last year, when the ICRC was granted observer status in the UN General Assembly. It is clear that this trust is not due only to the principle of humanity — of which the Red Cross, be it said, does not have the monopoly. The success of the International Committee's work is based largely on the credibility of three other fundamental principles that it has made its own: neutrality, independence, and impartiality. The mandates conferred upon the ICRC over the years — for example, that of repatriating prisoners of war and hostages after the war between Turks and Greeks in the early 1920s in Anatolia — are clear indications of the effectiveness with which the Committee applies these principles.

2. Legal and operational aspects of the ICRC's work

Before considering the legal and operational aspects of the ICRC's work, illustrated by examples of past and present activities in various parts of the world, it should be noted that the ICRC's humanitarian

mandate is a crucial link in the symbiosis of concrete action and humanitarian law: each ICRC operation is a practical manifestation of the legal norms and, in its own turn, influences the interpretation and formulation of the law.

The work of the Red Cross in Greece between 1941 and 1945 during the occupation by German, Italian and Bulgarian forces, illustrates the activities of protection and assistance for persons in occupied territory. During the Second World War, international humanitarian law contained no provisions protecting civilians, in spite of proposals submitted to States by the ICRC from 1921 onward. Consequently, the action taken by the ICRC in favour of civilians had no clear legal basis and had to be carried out on the strength of the institution's moral standing and the ability of its members and delegates to persuade the belligerents to accept their proposals.

The disastrous economic situation in Greece after the occupation by the Axis powers — a harrowing episode in the history of Greece — led to a famine that was to continue throughout the war and, especially in the very severe winter of 1941/1942, to cost the lives of thousands of Greeks. Beginning in September 1941, the ICRC collected food relief supplies from the Turkish Red Crescent, the Swiss Red Cross and the Swedish Red Cross. But the Allied blockade made it impossible to transport to Greece any foodstuffs from outside continental Europe, and the Allies were willing to lift the blockade only on condition that the distribution of goods did not benefit the occupying powers. In order to meet the requirements of each of the Parties to the conflict, the government of Sweden, a neutral country which provided the ships to transport the relief supplies, and the ICRC set up a politically neutral Managing Commission, independent of the occupying powers and composed of Swiss and Swedish ICRC delegates, with a representative of the Swedish Government at its head. This Commission, operating under three successive types of structure, was able to distribute 712,000 tonnes of food and 900 tonnes of clothing between 1942 and 1945, and by so doing helped to ensure the material survival of the Hellenic people during those grim years.

The Red Cross delegates who travelled round the Greek countryside from town to town and village to village to organize and supervise the distributions of relief were eye-witnesses or received testimony of the terrible oppression of the civilian population by the occupying troops, especially after the collapse of the Italian Fascist regime, when the Germans controlled the whole of Greece. The blind reprisals following attacks by the Resistance, the internment of political detainees and hostages in appalling conditions, the deportation of Jews

to the extermination camps in eastern Europe, were events requiring action that could not be restricted to material assistance but demanded the protection of the victims' physical and moral integrity.

Unfortunately, the existing law gave the ICRC no mandate to take such action. First alarmed, then revolted, the delegates asked Geneva what they should do, and tried to urge the occupying power to put a stop to certain abuses. The position adopted by the Committee in Geneva was one of extreme caution, particularly with regard to the persecution of the Jews: since it had no clear mandate to intervene in behalf of civilians and feared that the Germans would prevent it from having access to prisoners of war — who, under the 1929 Convention, were entitled to protection — the ICRC did not encourage its delegates to become involved, and made only reserved approaches to the government of the Third Reich. The Nazis, in any case, declared any request on the matter inadmissible and refused, for example, to consider any enquiries concerning the fate of people of the Jewish faith. The ICRC delegate in Thessaloniki, who witnessed the deportation of 50,000 Jews from that city, was for instance expelled by the Germans because he sent a telegram to Geneva asking the Committee to intervene with the German Government. Accompanying the convoys of deportees to their departure point, distributing small amounts of relief supplies, sending parcels to the concentration camps — these were virtually the only humane gestures that the Red Cross delegates were able to make for the civilians being persecuted, deported and killed, not only in Greece but throughout Europe. In the face of the deportation and elimination of millions of men, women and children, it was very little.

Should the ICRC have done more? Could it have done more? This question has been much discussed since 1945, by intellectuals, journalists, survivors of the Nazi persecutions, and by the ICRC itself. Indeed, the Committee sponsored a historical research project, now published, by the former Rector of Geneva University, Professor Jean-Claude Favez.¹ Today, looking at this complete failure of a whole civilization, I will say, yes, the ICRC should have tried to do more. It ought to have made more vigorous efforts to influence the Nazi government in Berlin, and Germany's allies and the authorities in the countries under occupation. Yet I doubt whether it would have been

¹ Jean-Claude Favez, *Une mission impossible? Le CICR, les déportations et les camps de concentration nazis*, Payot, Lausanne, 1988; in German, *War der Holocaust aufzuhalten? Das Internationale Rote Kreuz und das Dritte Reich*, Verlag Neue Zürcher Zeitung, Zurich, 1989.

able to obtain much more: the will of the executioners was unshakeable, as shown very clearly by the replies sent to the ICRC when it tried to take action.

The massacre of millions of civilians committed by Nazi Germany did, however, make the international community realize that the protection of civilians in countries at war, which the ICRC had been demanding since the 1920s, had to be included in international law. However, it is appropriate to recall at this point that ICRC delegates in a number of occupied countries took individual action that enabled lives to be saved. We pay tribute to their enterprise and their courage.

The Diplomatic Conference that assembled in 1949 to revise the entire body of international humanitarian law accordingly adopted the Fourth Geneva Convention, relating to the protection of civilians in time of war. Bearing in mind the experiences of the 1939-1945 war, this Convention prohibits, among other things, the carrying out of reprisals and the taking of hostages; it also guarantees the ICRC access to protected persons.

At present, the territories occupied by Israel are the main field of application of the Fourth Geneva Convention. About forty ICRC delegates are posted — and have been for 22 years — in the West Bank and in the Gaza Strip to observe the conduct of the occupying troops and, if necessary, to take action with the authorities. In 1990, the ICRC visited more than 16,000 Palestinian detainees in prisons and internment camps; it also forwards family news between prisoners and their families, who are often scattered all over the Middle East, and provides assistance to hospitals when required.

3. The ICRC and non-international armed conflicts

The legal position in the event of armed conflict within a country has also evolved since the end of the Second World War. Up to 1949, international humanitarian law, as a treaty among sovereign States, applied only to war *between* States. Nevertheless, the ICRC had had the opportunity much earlier to work during internal conflicts: there were the clashes between Bolsheviks and Tsarists after the Russian Revolution of 1917 and, in particular, the Spanish Civil War, where ICRC delegates played a considerable role. Experience has shown that civil wars, which are usually a confrontation between ideologies, are waged with a brutality and a contempt for humane values often unequalled in conventional wars.

When the fighting between government forces and the *Andartès* — the partisans — broke out in Greece in December 1944, the ICRC had the advantage of being already on the spot and of having acquired a certain renown through its relief work during the occupation. The ICRC delegates tried to distribute relief to the population of Athens, who were utterly destitute; but the capital was divided into two camps. Battles were waged savagely, with no respect for the red cross emblem, and the delegates many times took their lives in their hands. Thousands of civilians were massacred or taken hostage. In mid-January 1945, one of the delegates managed to make contact with the leaders of ELAS, the Greek People's Army of Liberation, and succeeded in obtaining a signed agreement allowing the ICRC to take food aid into the areas controlled by the opposition, to try to trace missing persons, often taken hostage, and to take them back to their homes.

When the fighting ceased, in February 1945, the ICRC withdrew its delegation from Greece. However, a considerable number of people remained in exile for political reasons, and the armed opposition forces formed again in the north of the country. Following mass arrests of political opponents by the government and various rebel attacks against the royal armed forces during 1946, the ICRC offered its services to the Greek Government in February 1947 and proposed that the rules of the Convention on the treatment of prisoners of war should be applied to captured rebel combatants and political detainees. The government refused the ICRC's proposals, explaining that there was no civil war in Greece but, as Minister Tsaldaris wrote, "quite simply, a number of persons who have rebelled against the laws of the State and have formed bands that commit common-law crimes in the midst of subversive activities".²

The Hellenic government's reaction to the ICRC proposals was courteous but clear: it refused to put the armed forces of a sovereign State and the "rebel bandits" on the same footing by applying international law in a situation that it considered as entirely an internal matter and thus not subject to that law. Since 1947, the ICRC has received similar replies from governments to which it has offered its services in a number of internal conflicts. Today, for example, the government of Myanmar refuses to allow the ICRC to work in the context of the internal conflict, and the Moroccan Government has

² Note from the Minister for Foreign Affairs, Constantin Tsaldaris, dated 8 March 1947.

prohibited the ICRC from having access to the western Sahara and to Sahrawi prisoners, arguing that the problem is an internal one.

It is in such situations that the credibility of the ICRC's neutrality and impartiality is decisive. Governments have to be convinced that the purpose of the ICRC is purely humanitarian, i.e., to alleviate the suffering of victims. The ICRC does not wish to become embroiled in the internal affairs of a country: it makes no statement as to the legitimacy of combat, it merely wants to have access to security detainees and to prisoners of war. It does not ask for the reasons leading to the arrest of a detainee: it requires the detainee to be treated with humanity. If it is to provide effective relief on both sides in a conflict, it must negotiate with those who, in the field and by force of arms, actually control access to the victims it wishes to help. Getting this message across is no easy matter. In Greece the ICRC succeeded in doing so, at least partly, with time and thanks to the obstinacy of its delegates.

In May 1947, the Greek Government authorized the ICRC to send relief supplies for distribution by the Hellenic Red Cross. Detainees and their families were also allowed to receive relief. However, the lack of enthusiasm felt by the authorities and the Hellenic Red Cross for the presence of the ICRC was demonstrated by administrative obstruction and an obvious reluctance to cooperate in any way. For fifteen months, while the numbers of political detainees and of refugees from the combat areas increased daily, the delegates were mainly occupied in attempting to get customs clearance for the relief supplies arriving at Piraeus. It was only after the election of Constantin Georgacopoulos as President of the Hellenic Red Cross, in May 1948, that the ICRC could really start work: relief supplies became easier to get out of the warehouses, distributions were organized with the ICRC present, and visits to detainees became more frequent. In the meantime, the civil war was at its height. Thousands of detainees, among them many women and children, were herded pell-mell into incredibly overcrowded prisons. The captured *Andartès* were not granted prisoner-of-war status and were sent to rehabilitation camps on the islands. Hundreds of thousands of refugees surged down from the north, where fighting was raging. Thousands of people, especially children, were taken from villages in areas controlled by ELAS and sent to Eastern bloc countries. In 1949 the ICRC was providing material assistance to institutions housing some 40,000 children, and to places of detention holding several tens of thousands of prisoners. Compared with what it had managed to do during the German occupation of Greece, the difficult work of the ICRC during the civil war

gave very meagre results: 1,265 tonnes of relief were distributed between 1947 and 1953, and relatively few prisoners benefited from ICRC visits.

Since the time of the Greek civil war, international law in relation to internal armed conflicts has also developed. Indeed, the four Geneva Conventions of 1949 contain a common article in which the High Contracting Parties undertake to respect the basic humanitarian rules in the event of an internal conflict; the article also empowers the ICRC to offer its humanitarian services. In addition, a Protocol additional to the Geneva Conventions, adopted in 1977, broadens and specifies the measures that can be taken to protect the victims of non-international conflicts. At present, 94 States have already acceded to this Protocol; but unfortunately Greece is not yet party to it. During my discussions with the highest authorities of the Republic, I again stressed the ICRC's desire to see Greece soon become party to Protocol II.

Even though humanitarian law does not oblige States to accept the offer of services that the ICRC may make to them in the event of internal armed conflict, the great majority of ICRC operations being carried on today are in favour of victims of a civil war. Lebanon, El Salvador, Peru, Liberia, Somalia, Mozambique, Afghanistan, Sri Lanka and the Philippines are a few examples.

Naturally, the ICRC's presence in this type of conflict does not mean a sudden and lasting improvement in the situation. It is only as time goes by, as the delegates continue their visits to places of detention and areas of fighting and, above all, as they spread the knowledge of humanitarian law and Red Cross principles, that the work takes effect. In the first few months, even the first few years, delegates are often faced with politicians' susceptibilities, armies' incomprehension, the ideological blindness of the Parties and the lack of information of the population. Their task of widening the scope of humanitarian work is thus extremely arduous.

4. The ICRC and internal disturbances

The third type of situation calling for action by the ICRC is the one we describe as "internal disturbances and tensions". It is characterized by great political tension, often following a *coup d'état*; constitutional guarantees are suspended and political repression reigns. The fact that there are no dead or wounded and that life within the country appears normal and without material hardship does not remove the

need for protection. In such situations the ICRC, on the basis of its right to take humanitarian initiatives, offers its services for visits to detainees held under emergency laws, administrative detainees and security detainees, in short, all those commonly known as political prisoners.

This is what it did in Greece in 1967. Scarcely two weeks after the *coup d'état* of 21 April, an ICRC delegate was received by the Prime Minister of the Military Government, Mr. Kollias, and by the Ministers of Foreign Affairs and of the Interior. Thanks to these interviews, the delegate was able to visit a number of detainees and persons under house arrest, including Mr. Papandreou and his son. Between 1967 and November 1970, ICRC delegates carried out eleven series of visits to prisons and detention camps and made innumerable *ad hoc* visits. During this period, they organized meetings of families with relatives who had been deported to the islands; they succeeded in arranging for the camp at Yioura, unsuitable for detainees, to be completely evacuated, and for the numbers of detainees in other, overcrowded camps to be greatly reduced; they persuaded the authorities to release several hundred detainees for reasons of health or age; and they distributed food and clothing to detainees' families.

During this time, the rest of Europe was becoming interested in the plight of political detainees in Greece. The press published detailed reports of the use of torture by the forces of law and order. Following complaints filed, the Council of Europe set up a Sub-Commission to investigate these reports. The Greek regime was under great pressure, politically and from the media, which it attempted to counter by stating that the ICRC was satisfied with the conditions of detention observed by its delegates in the camps and the prisons. The media thereupon attacked the ICRC for what they saw as complicity with the régime in Greece. In 1969, when the régime published excerpts from ICRC reports of visits, to give the false impression that the conditions of detention were satisfactory, the ICRC asked for and obtained publication of these reports in full. The report of the Council of Europe, submitted to the Committee of Ministers in December 1969, included complaints of several cases of torture.

One month before the debate of the Council of Europe that led to Greece's withdrawal from that body, the ICRC signed an agreement with the Hellenic Government, the first ever in the history of the ICRC concerning its right to act in behalf of political detainees. The agreement guaranteed the ICRC delegates access to all places of detention, including police stations (where torture is always most often practised everywhere), and confirmed the confidentiality of ICRC

reports. The agreement on the visits remained in force for a year, during which much valuable work was done. In November 1970, the Government terminated the agreement and the visits came to an end. They were resumed only after the fall of the military junta.

The work done for political detainees in Greece is a fairly good illustration of the way the ICRC holds a judicious balance between neutrality and a public stance. Our principle is simple: if delegates find that humanitarian law has been violated or its rules abused, then the ICRC must first do all in its power to eliminate such abuses through direct and confidential representations to the authorities concerned. Only if such representations fail, and only if it is sure that its exposure of the violations will not worsen the position of the victims to be protected, will the ICRC take a public stance. The situation in which it found itself in 1969 was a typical one: by keeping silent on what its delegates had seen in the Greek prisons, it laid itself open to charges of complicity with those in power, who then tried to fabricate an alibi on the basis of its discretion. Nevertheless, the purpose of ICRC visits is to protect those arrested and improve their conditions of detention by direct intercession and not through public pressure. Obviously, a government will not accept ICRC visits if, the following day, all the newspapers carry a full account of the horrors discovered by the delegates. But the Greek example also shows that public opinion, rallied in favour of human rights and humanitarian law, can result in a government — prompted more, perhaps, by political considerations than by genuine humanitarian concern — allowing the ICRC to enter the prisons and to carry out its humanitarian work.

In 1990, the ICRC visited more than 84,000 prisoners and other detainees held in connection with conflicts or internal disturbances, from Northern Ireland to the Philippines, from Romania to Chile, from Jordan to Nicaragua, from Iran to East Timor, and from Iraq to Rwanda. Every detainee visited by an ICRC delegate thus has someone to talk to, someone through whom to communicate with his or her family, someone who will ask regularly for news of that detainee. This work is able to continue and indeed expand as a result of the commitment by public opinion and governments to human rights and humanitarian law, and thanks to the neutrality and the independence of the ICRC.

5. Conclusion

It is not easy to review the painful episodes in Greece's recent history, to look again at difficult moments in the relations between the ICRC and this country. But we know that Greece has been able to overcome terrible ordeals in the course of this century. The Hellenes have fought, and many have died, for their country, for freedom, democracy and justice. Do not believe that the neutrality of the ICRC delegates prevented them from feeling close to a people who, in the depths of suffering and despair, never gave up their dignity, their great civilization and their humanity. On the contrary: the humanity that we came to Greece to defend was learned anew each day with the Greek people themselves. For humanity is a gift that is exchanged, and in Greece the ICRC received more than it was able to give.

All over the world today, millions of children, women and men suffering from war, imprisonment, disease or natural hardships hope for a little humanity to relieve their distress. There are laws that guarantee this humanity, there are ICRC delegates who uphold it, there are millions of Red Cross and Red Crescent volunteer workers spreading it throughout the globe. In order to widen its boundaries, still too narrow and too often violated, we need the support, moral, political and material, of everyone. I am confident that particularly great understanding will be shown for this appeal, in Athens and throughout the world.

Cornelio Sommaruga
President
International Committee of
the Red Cross

Headquarters agreement between the State of Kuwait and the ICRC

A headquarters agreement was signed on 30 October 1991 between H.E. Sheikh Sabah Salem al Sabah, Deputy Prime Minister and Minister for Foreign Affairs of the State of Kuwait, and Mr. Cornelio Sommaruga, President of the ICRC, to pave the way for the opening of an ICRC regional delegation for the Arabian peninsula. In addition to Kuwait itself, the delegation, which will have its headquarters in Kuwait City, will cover Bahrain, Oman, Qatar, Saudi Arabia, the United Arab Emirates and Yemen. The agreement will enter into force once it has been ratified by the Council of Ministers in Kuwait.

This agreement was finalized during an official mission by the President of the ICRC, which took place between 28 and 30 October 1991 at the invitation of the State of Kuwait. During his visit, Mr. Sommaruga had discussions with State officials at the highest level: H.R.H. Sheikh Jaber al Ahmad al Jaber al Sabah, Emir of Kuwait; H.R.H. Sheikh Saad al Abdullah al Salim al Sabah, Crown Prince and Prime Minister; H.E. Sheikh Ahmad Hamoud al Jaber al Sabah, Minister of the Interior; H.E. Ali al Seif, Deputy Minister of Health; and H.E. Ghazi Obeid al Sammar, Minister of Justice and Foreign Affairs.

Discussions centred mainly on humanitarian issues arising from the Gulf war, in particular the treatment of people detained in Kuwait and the whereabouts of Kuwaiti soldiers and civilians who disappeared during the occupation of Kuwait and may be detained in Iraq. The President also discussed the question of Kuwait's financial contribution to the ICRC.

Mr. Sommaruga also visited the headquarters of the National Committee for Prisoners of War and Missing Persons and met the leaders of the Kuwait Red Crescent, Dr. Abdel Aziz al Sager, President, and Dr. Barges Hemoud al Barges, Secretary General; with them he discussed the activities of the ICRC, the forthcoming International

meetings of the Red Cross and Red Crescent and the question of the Kuwait Red Crescent's financial support for the ICRC.

NEWS FROM HEADQUARTERS

Elections

At its meeting on 12 December 1991, the Assembly of the International Committee of the Red Cross re-elected **Mr. Cornelio Sommaruga** as ICRC President, a post he has held since May 1987, for another four-year term.

The Assembly also elected **Mr. Pierre Keller** as non-permanent Vice-President to succeed **Mr. Maurice Aubert**. The latter, together with **Mr. Rudolf Jäckli**, was re-elected for a fourth term as a member of the Committee.

Mrs. Anne Petitpierre, **Mrs. Liselotte Kraus-Gurny** and **Mr. Paolo Bernasconi** were re-elected members of the Committee for a second term in office.

Honorary membership was conferred upon outgoing members **Mr. Hans Haug** and **Mr. André Ghelfi**, who have reached the statutory age limit and are now leaving the Committee after having respectively served ten years and seven years each.

In addition, the Assembly took note with great satisfaction of the election by the Council of Delegates, on 30 November 1991 in Budapest, of Mr. Maurice Aubert to succeed the late **Mr. Alexandre Hay** as Chairman of the Commission on the Red Cross, Red Crescent and Peace.

Humanitarian meetings on conflict in Yugoslavia

At the invitation of the International Committee of the Red Cross, plenipotentiary representatives of the Yugoslav Federal Executive Council, the Republic of Croatia, the Republic of Serbia and the Federal Army met in Geneva on 26 and 27 November 1991 to find solutions to the various matters of humanitarian concern arising from the conflict in Yugoslavia. The meeting gave substance to the declaration of respect for international humanitarian law made by the Presidents of the six Republics in The Hague on 5 November.

All those taking part said that they were willing to separate humanitarian matters from political issues. They declared that they would implement the provisions of the 1949 Geneva Conventions and Additional Protocol I that provide protection for the wounded and sick, civilians and prisoners and govern the conduct of hostilities.

The participants adopted the following recommendations:

- to set up a joint commission to trace missing persons;
- to establish a procedure for transmitting allegations of violations of international humanitarian law;
- to do more to spread knowledge of the rules of international humanitarian law among all combatants and to promote respect for the Red Cross emblem.

They acknowledged the importance of setting up protected zones under ICRC supervision and of allowing humanitarian aid consignments free passage.

It was agreed that the participants would attend a future meeting held under ICRC auspices in Geneva on 20 December 1991.

* * *

Previously, representatives of the Red Cross of Yugoslavia and of the Red Cross in the country's six Republics (Bosnia-Herzegovina,

Croatia, Macedonia, Montenegro, Serbia and Slovenia), meeting in Geneva on 15 November 1991 at the invitation of the International Committee of the Red Cross, unanimously reaffirmed that, in accordance with the provisions of international humanitarian law, work to aid the victims of the conflict in Yugoslavia must be given absolute priority.

The meeting was also attended by leading officials of the ICRC, the League of Red Cross and Red Crescent Societies and the President of the Executive Committee of the Hungarian Red Cross. The participants emphasized the need to strengthen the role of the Red Cross in the field and to facilitate its access to the victims, thus ensuring that they receive the help to which they are entitled.

Fulfilling the wish expressed by ICRC President Cornelio Sommaruga in his welcoming address, the participants also stressed the importance of the principles and ideals that unite all members of the Movement and enable them to preserve a measure of humanity in the midst of battle.

In the Red Cross and Red Crescent World

NATIONAL RED CROSS AND RED CRESCENT SOCIETIES

60 years of Red Cross in New Zealand

by Carol Duncan

During the year 1991, the New Zealand Red Cross Society has been celebrating 60 years of alleviating human suffering, both within New Zealand and overseas.

Like so many other Red Cross and Red Crescent Societies, the New Zealand Red Cross was born of New Zealand's desire to assist victims of war. After the outbreak of the First World War, the Red Cross thus began in New Zealand as a branch of the British Red Cross.

During the First World War, New Zealand Red Cross branches concerned themselves mainly with work for the sick and wounded of the New Zealand and Allied armies, and those who had fallen into enemy hands. Activities included making bandages, equipping hospitals and offering first-aid and nursing training to volunteers. Upon completion of their first-aid and nursing training, many volunteers travelled overseas as voluntary aides to work in hospitals and hospital ships caring for the war wounded.

After the war, branches began to assess their role in New Zealand society. Some members felt that when the war was over so would be the work of the Red Cross in New Zealand. However, others were of the view that there would be other work for the Red Cross to do.

Those with the latter view proved right. By the time news of the Armistice on 11 November 1918 reached New Zealand, members and volunteers from the New Zealand Red Cross were treating thousands of people infected with the flu as Red Cross volunteers turned their hands to communal cooking and laundering, caring for children, home nursing, hospital help and delivering food and medicines.

By the end of that year the worst of the epidemic seemed to be over and volunteers then focused their attention on wounded soldiers, who had been trickling home since the end of the war and who were still in need of medical

care. Convalescent homes were opened by many Red Cross branches as Red Cross volunteers continued their efforts on the soldiers' behalf.

By the beginning of the 1920s, Red Cross volunteers had begun to get involved in peacetime activities. Programmes included an auxiliary service for junior members, the promotion of health and a Voluntary Aid Detachment (VAD) - Red Cross trainees certified in home nursing standing by in readiness for emergency work

In 1931 the preparedness of the VADs and the usefulness of the Society's other relief activities were tested when an earthquake causing extensive damage hit central New Zealand. The Red Cross dispatched medical supplies to the scene, registered the homeless, found them shelter, and distributed food and relief supplies. The New Zealand Red Cross worked well and efficiently in this disaster and proved itself to be a highly developed disaster relief organization.

Ties were severed with the British Red Cross when the New Zealand Red Cross became an independent National Society in its own right. This led to its recognition by the International Committee of the Red Cross in 1931 and in 1932 it became a member of the then League of Red Cross Societies.

It was only a few years after its admission into the League that the New Zealand Red Cross was for the first time called upon to provide medical personnel and supplies overseas. The Society was asked to assist the people of China during the country's invasion. Many New Zealanders volunteered and Red Cross members set about raising the necessary funds.

In the years 1931-45, the Society worked to establish itself with trained volunteers in order to continue to give assistance and relief to people in the community. Many branches were of a relatively small size with few members. Of these, many had worked for the Red Cross since 1918. However, communities cried out for the services of the Red Cross, especially during the depression years, and the New Zealand Red Cross grew to meet the challenge.

In 1939, when the Second World War broke out, volunteers once again took on the responsibility of helping to care for the sick and wounded. Besides the traditional activities of bandage rolling and first-aid training, Red Cross parcels were also prepared. These parcels included emergency rations such as cheese, coffee, milk, butter and chocolate. Many who survived the Second World War have said that if it were not for these Red Cross parcels they might not have pulled through.

After the war, volunteers were kept busy providing food and relief items for displaced people in Europe and Great Britain. Refugees were welcomed to New Zealand and Red Cross volunteers assisted in their resettlement, finding suitable accommodation and equipping each house with all the things necessary to make it a home.

Once again the New Zealand Red Cross had to turn its attention to peacetime activities and assess its role in New Zealand society. Disaster preparedness, community services and youth programmes were developed further, along with programmes to support the work of the International Movement. These activities have formed the core of New Zealand Red Cross Society activities through the last four decades and into the 1990s.

Ever since the 1960s the New Zealand Red Cross has established itself as a major donor to the International Committee of the Red Cross and the League of Red Cross and Red Crescent Societies by providing highly trained medical and relief personnel to work in Red Cross and Red Crescent operations throughout the world. Raising funds for international appeals is another highly developed priority. The Society also began looking more closely at assisting New Zealand's neighbouring Pacific island countries, working to help them develop strong National Societies of their own.

Although some of the activities taken on by the Red Cross through its early history are no longer needed, Red Cross responsibilities have not changed. In the foreseeable future there will still be human suffering resulting from natural disasters and conflicts. In this year, our 60th, the Society's activities fall within six major programmes: international humanitarian law, youth programmes, health and community services, emergency preparedness, international services and development and disaster relief. Members and volunteers continue to commit themselves to alleviating human suffering, both within New Zealand and overseas, thus enabling the Society to live up to its motto: *Always Needed — Always There*.¹

Carol Duncan
Public Relations Officer
New Zealand Red Cross Society

¹ The author wishes to acknowledge information obtained from *The Geneva Connection*, by Meryl Lowrie and published by The New Zealand Red Cross Society Incorporated.

ANNIVERSARIES

This year, several National Societies have celebrated the anniversary of the date when they were founded:

- 125 years (1866): *Swiss Red Cross*;
- 70 years (1921): *Albanian Red Cross*;
- 60 years (1931): *New Zealand Red Cross*;
- 30 years (1961): *Burkinabé Red Cross*;
- 25 years (1966): *Gambia Red Cross*;
Kuwait Red Crescent;
- 20 years (1971): *Fiji Red Cross*;
Mauritanian Red Crescent;
- 10 years (1981): *Red Cross of Grenada*;
Qatar Red Crescent;
Zimbabwe Red Cross.

Likewise, the *Hungarian Red Cross*, which hosted the Movement's international statutory meetings, is celebrating 110 years of existence. This year is also the 110th anniversary of the *American Red Cross*.

The *Review* warmly congratulates these National Societies and expresses its best wishes for the success of their future activities.

Recognition of the Lithuanian Red Cross Society confirmed

At its Assembly on 7 November 1991 the International Committee of the Red Cross confirmed the validity of its previous recognition, on 28 August 1923, of the Lithuanian Red Cross Society.

This decision, which enables the Lithuanian Red Cross Society to resume its place within the International Red Cross and Red Crescent Movement, brings the number of duly recognized National Societies to **149**.

Recognition of the Latvian Red Cross Society confirmed

The International Committee of the Red Cross confirmed on 20 November 1991 the validity of its recognition of the Latvian Red Cross Society announced on 10 January 1923.

This decision, which enables the Latvian Red Cross to resume its place in the International Red Cross and Red Crescent Movement, brings to **150** the number of duly recognized National Societies.

REGIONAL CONFERENCES

TWENTY-FIRST CONFERENCE OF THE ARAB RED CRESCENT AND RED CROSS SOCIETIES

(Damascus, 25-27 August 1991)

The 21st Conference of the Arab Red Crescent and Red Cross Societies took place in Damascus from 25 to 27 August 1991. This meeting brought together representatives of 18 Arab National Societies, the ICRC and the League (now International Federation) of Red Cross and Red Crescent Societies.

The ICRC delegation was led by Mr. Claudio Caratsch, the institution's Vice-President. It included Mr. François Bugnion, Deputy Director, Principles, Law and Relations with the Movement, Mr. Angelo Gnaedinger, Delegate General for the Middle East, Mr. Roland Huguenin, head of delegation in Cairo, Mr. Alain Lennartz, head of delegation in Damascus, and Mr. Ameer Zemmali, member of the Legal Division.

The League was represented by Mr. Mario Villarroel, its President, Mr. Pär Stenbäck, Secretary General, Mr. Solayman Eleghmary, head of the Middle East/North Africa Department, Ms. Yolande Camporini, Technical Adviser on statutory matters and dissemination, and Mr. William Cassis, senior League Adviser.

In addition, delegations from Asian, American and European National Societies as well as the President of the International Institute of Humanitarian Law took part in the Conference as guests.

The consequences, in humanitarian terms, of the Gulf war, unity among Arab National Societies and peace in the Middle East were the themes of the opening speeches given by Dr. Fuad Hamza, President of the Syrian Red Crescent, Mr. Abdel Ghani Ashi, Secretary General of the General Secretariat of Arab Red Crescent and Red Cross Societies, and Mr. Yasin Rajjuh, Syrian Minister of State for Cabinet Affairs.

In his report to the Conference, the Secretary General spoke of the protection and assistance operations launched during the Gulf war and paid tribute to the ICRC and the League for the way they helped the civilian victims of

the war and for the support they had given to the work of the Iraqi and Kuwaiti Red Crescent Societies.

The ICRC and League reports on their activities in the Middle East were then presented respectively by Mr. Caratsch and Mr. Stenbäck. These were followed by a detailed discussion of such subjects as prisoners of war, relief coordination within the National Societies and between them and the ICRC and the League.

Other items on the agenda included the occupied Arab territories, cooperation between Arab National Societies in the 1990s, National Society development (in particular blood-donation programmes and the role of women and children), the Strategic Work Plan of the League for the Nineties and the International Conference of the Red Cross and Red Crescent scheduled for November in Budapest.

Both the National Societies taking part in the Conference and its observers were invited to present reports.

The Conference ended with the adoption by consensus of 23 resolutions and recommendations. They included the following:

- ***The Gulf crisis and its consequences from a humanitarian point of view***

The Conference made a pressing appeal to States concerned for the release of all prisoners of war and civilian detainees, and called for the protection of civilians in each country, for the safeguard of their basic rights and for their treatment in a humanitarian manner.

- ***Role of the ICRC***

The Conference invited the ICRC to continue its humanitarian activities in the Arab countries for the benefit of the victims of armed conflict, in particular prisoners of war.

- ***Occupied Arab territories***

The Conference invited the National Societies to step up their support and assistance to the inhabitants of the occupied Arab territories and encouraged the ICRC to continue its efforts for the protection of the inhabitants thereof in accordance with the 1949 Geneva Conventions and their Additional Protocols.

- ***Occupied Lebanese territory***

The Conference called on the ICRC and the League to assume the responsibility of running the health centres taken over by the Israeli occupation forces.

- ***Assistance for the people of Iraq***

The Conference appealed to the international community to take such measures as may be necessary to alleviate the suffering of the Iraqi people caused by the shortage of food, medicines and other basic commodities.

- ***Lebanese Red Cross***

The Conference invited the Secretary General of the General Secretariat of Arab Red Crescent and Red Cross Societies to continue urging the Lebanese Government, the ICRC and the League to do what they can to strengthen the Lebanese Red Cross.

- ***Role of the League***

The Conference, recognizing with gratitude the efforts made by the League Secretariat to support humanitarian activities in Arab countries and initiate development programmes for the Arab National Societies, called on those Societies to cooperate with the League for the success of the projects they intend to implement in their respective countries and affirmed its support for the plan of action prepared by the League for the next ten years.

- ***Support for National Societies***

The Conference urged the Arab National Societies to extend their support and assistance to the National Societies of Lebanon, Sudan, Somalia, Yemen and Mauritania and called on the League to step up its support for these National Societies.

- ***Expression of gratitude to the Syrian Red Crescent***

The Conference extended its thanks and appreciation to the Syrian Government, people and Red Crescent Society for their warm welcome and hospitality. It expressed its pleasure at the success of the Conference, which had once again crystallized Arab unity in the humanitarian field.

NINTH CONFERENCE OF RED CROSS AND RED CRESCENT SOCIETIES OF THE BALKAN COUNTRIES

(Athens, 22-25 September 1991)

Organized by the Hellenic Red Cross, the Ninth Biennial Conference of the National Red Cross and Red Crescent Societies of the Balkan Countries took place in Athens from 22 to 25 September 1991. It was attended by leading members of the six National Societies of the Balkan countries (Albania, Bulgaria, Greece, Romania, Turkey and Yugoslavia) and, as guests, by delegations from the International Committee of the Red Cross (ICRC), the League of Red Cross and Red Crescent Societies, the Hungarian Red Cross, the Secretary General of the Conference of Arab Red Crescent and Red Cross Societies and a representative of the Henry Dunant Institute.

The ICRC's delegation was led by its President, Mr. Cornelio Sommaruga, accompanied by Dr. Rémi Russbach, Chief Medical Officer, Mr. Thierry Germond, Delegate General for Europe and North America, and Mr. Michel Martin, adviser on relations with the Movement. The League was represented by its President, Mr. Mario Villarroel Lander, Mr. Manuel Fiol, Head of Protocol, and Mr. Peter Titjes, Regional Delegate for Central and Eastern Europe.

Key features of the opening ceremony were messages from the Prime Minister and from the Greek Minister of Foreign Affairs, and addresses by the Presidents of the ICRC, the League and the Hellenic Red Cross. Mr. Sommaruga remarked in particular that recent changes within several of the National Societies present gave them an opportunity to adopt a new approach towards the Movement's Fundamental Principles, especially impartiality, neutrality and independence. He also stressed the importance for National Societies of having a democratic structure and remaining open to all; these, together with faithful adherence to the Principles, were guarantees for their development and the effectiveness of their work.

Discussions at the Conference concentrated on strengthening cooperation amongst the National Societies of the Balkan countries and on increased preparedness for emergency situations. In this connection, the Hellenic Red Cross put forward proposals for the development of joint medical, hygiene and social activities. A proposal to train joint medical teams to intervene

during emergencies led Dr. Russbach to draw attention to the experience acquired by the ICRC Medical Division in this sphere and the need for appropriate coordination within the Movement.

Giving an account of their activities since the previous Conference and of the fresh difficulties they were currently facing, the representatives of the Albanian, Bulgarian, Romanian and Yugoslav Red Cross Societies expressed their gratitude for the Movement's support since they began reorganizing their Societies. In particular, the head of the Red Cross of Yugoslavia's delegation expressed his satisfaction at the close cooperation established with ICRC delegates in helping the victims of the current armed conflict. Having observed from experience that the legal regulations applicable to non-international conflicts were inadequate, he made a strong plea for States to grant a greater role to the Red Cross, and especially to the ICRC, in responding to these situations. For the present, it was important to make humanitarian law known, to create a customary basis that would pave the way for new laws more binding on Parties and, in any case, to make National Societies better prepared to handle such situations.

The participants also discussed a series of topics introduced by eminent members of the Hellenic Red Cross. In particular, these concerned the recruitment of motivated and active volunteer workers, assistance to refugees, cooperation between the tracing services of the Balkan Societies, the dissemination of international humanitarian law within the armed forces, the Strategic Work Plan of the League for the Nineties, and the general coordination of relief for civilians, victims of disasters or armed conflicts.

The representatives of the Hellenic Red Cross, the Hungarian Red Cross and the ICRC then gave details of the preparations and agenda for the 1991 International Conference of the Red Cross and Red Crescent in Budapest and on the invitations which had been issued.

A final declaration was adopted by consensus, as is standard practice, the gist of which is as follows:

- it expresses the participants' sympathy and appreciation for the efforts of the Red Cross of Yugoslavia and the outstanding work of its volunteers, and appeals to all parties involved to respect and ensure respect for international humanitarian law and to support the work of the ICRC in Yugoslavia;
- it reaffirms the participants' support for the Strategic Work Plan of the League for the Nineties;
- it thanks the Hellenic Red Cross for its proposals on cooperation and expresses the wish that the other Balkan Societies be given time to study them in greater depth, to discuss them again and to take the appropriate

decisions at a subsequent meeting in Budapest in November 1991, during the 26th International Conference of the Red Cross and Red Crescent.

The participants lastly accepted the offer by the Bulgarian Red Cross to host the next Conference of the Balkan National Societies in Sofia in 1993 and expressed their gratitude to the Hellenic Red Cross for its excellent organization of the Ninth Conference and for the warm hospitality extended to all guests.

REGIONAL MEETINGS

ON INTERNATIONAL HUMANITARIAN LAW

Regional Seminar on national measures to implement international humanitarian law

(San José, Costa Rica, 18-21 June 1991)

The International Committee of the Red Cross (ICRC), which has played a key role in forging the rules of international humanitarian law (IHL), is aware of the fact that the 1949 Geneva Conventions and their 1979 Additional Protocols, although formally adopted by the majority of States, are in danger of remaining a dead letter unless legal and practical measures are taken at the national level to ensure that they are applied.

The ICRC has long encouraged States to adopt, in peacetime, *national measures to implement IHL*, and the matter has been placed on the agenda of several International Conferences of the Red Cross. After considering a report and two draft resolutions on the subject, the 25th International Conference (Geneva, October 1986) adopted by consensus Resolution V reminding States of the fundamental importance of introducing national measures to implement IHL and of the responsibility of governments, National Societies and the ICRC in that respect.

Pursuant to Resolution V, the ICRC wrote several times to governments and National Societies requesting information on the measures they had adopted or were planning to take to meet their obligations under IHL.¹

¹ See *IRRC*, No. 263, March-April 1988, pp. 121-140 and No. 281, March-April 1991, pp. 134-139.

The ICRC also organized regional seminars for national experts. The first of these (Seminar on the implementation of international humanitarian law, Sofia, 20-22 September 1990)² was considered by participants to be a necessary follow-up to the written requests. Such seminars enable those concerned not only to exchange opinions and experiences, but also to establish contacts and report on progress.

The second seminar — the first to take place in Latin America — was organized by the ICRC in cooperation with the Inter-American Institute of Human Rights (IIDH) in San José, Costa Rica, on 18-21 June 1991.³ This event, planned by the ICRC in follow-up to aforementioned Resolution V and coinciding with the IIDH's tenth anniversary, further strengthened the close ties between the Institute and the ICRC in the area of dissemination of human rights and IHL.

Over 40 government officials, parliamentarians, academics and National Society representatives from 18 Latin American countries attended the San José seminar. Their active participation led to productive discussions on selected topics and an in-depth analysis of the problems connected with the adoption of national measures to implement IHL in the region.

The seminar focused on the following subjects: the global strategy to implement international rules protecting the individual; ICRC efforts to promote the adoption of national measures to implement IHL; ratification and the political will to implement IHL; the relationship between international law and domestic law; the problems and priorities of enforcing national measures to implement IHL; national mechanisms for the adoption of such measures; necessary legislative, administrative and other measures; the relationship between human rights and humanitarian law; and the measures needed to implement the rules of IHL applicable in situations of non-international armed conflict and the relationship between those rules and fundamental human rights guarantees.

The papers and proceedings of the seminar will be published separately.

The seminar participants adopted the following document:

² A report on this seminar was published in *IRRC*, No. 281, March-April 1991, pp. 223-233.

³ Similar seminars were organized at the national level, in cooperation with the ICRC, by the Ministry for Foreign Affairs of Uruguay (Montevideo, 6-8 September 1989) and the Romanian National Red Cross Society (Bucarest 4-5 June 1991).

Conclusions and recommendations of the Regional Seminar on national measures to implement international humanitarian law

“The participants of the Regional Seminar on national measures to implement international humanitarian law, organized in San José, Costa Rica, on 18-21 June 1991 by the International Committee of the Red Cross (ICRC) in cooperation with the Inter-American Institute of Human Rights, adopted the following major conclusions and recommendations:

- I. If the international system for the protection of the individual is to function, implementation of the relevant rules should be coordinated at every level.*
- II. The government authorities concerned are under an obligation to introduce into their national legislation the measures necessary to implement the provisions of treaties protecting the individual, which, by their very nature, are directly applicable.*
- III. State legislative bodies should take the necessary steps to ensure that the treaty provisions effectively protect the people for whom they are intended.*
- IV. The legal authorities should receive further training in application of the international rules in force.*
- V. To achieve these aims it is essential to:*
 - (a) step up the dissemination of IHL, in particular by including it in the training of the armed forces, the police forces and government officials responsible for its implementation;*
 - (b) urge the appointment of a national body to coordinate and advise the public authorities on the implementation of IHL in cooperation with the National Red Cross Society and, if possible, with the organizations responsible for promoting and defending human rights;*
 - (c) raise public awareness of the need for the promotion, adoption, ratification and implementation of IHL by the relevant legislative authorities and State bodies;*
 - (d) pass on to the international institutions concerned information on national measures to implement IHL, provide mutual assistance by exchanging data and ensure that appropriate documentation is made available for training and dissemination purposes;*
 - (e) urge States to adopt international preparedness and monitoring mechanisms and, in particular, to recognize the competence of*

the International Fact-Finding Commission provided for in Article 90 of Protocol I of 1977;

- (f) encourage States to revise their penal legislation to provide for the punishment of non-compliance with and violations of IHL;*
- (g) extend and develop cooperation with the international organizations working to protect the individual so as to enhance coordination and harmonization of all activities to promote human rights;*
- (h) promote studies at the national level to determine the most appropriate implementation measures and detect any shortcomings in those already existing.*

VI. The role of the armed forces and the police in efforts to eliminate drug trafficking should be assessed in relation to IHL and human rights.

The seminar also underscored the importance of regional contacts in identifying common problems and promoting the harmonization of measures to implement IHL.

The participants expressed their gratitude to the organizers of the seminar, namely the ICRC and the IIDH, for having given them the opportunity to share their experiences, and to the authorities of Costa Rica for having hosted the event.”

María Teresa Dutli

Sixteenth Round Table of the International Institute of Humanitarian Law

(San Remo, 3-7 September 1991)

The 16th Round Table on current international humanitarian law problems, organized by the International Institute of Humanitarian Law, was held in San Remo from 3-7 September 1991.

Held under the auspices of the International Committee of the Red Cross (ICRC), the United Nations High Commissioner for Refugees, the United Nations Centre for Human Rights, the International Organization for Migration and the League of Red Cross and Red Crescent Societies, the meeting was attended by some 150 participants, including representatives of about fifteen National Red Cross and Red Crescent Societies, academics, and representatives of diplomatic missions and non-governmental organizations.

The ICRC was represented at the Round Table by Mr. Cornelio Sommaruga, President, Mr. Paolo Bernasconi, member of the Committee, and Mr. Yves Sandoz, member of the Executive Board and Director of the Department of Principles, Law and Relations with the Movement, as well as by Ms. Denise Plattner, Mr. Angelo Gnaedinger, Mr. Jean-Philippe Lavoyer, Mr. Jacques Meurant, Mr. Jean-Claude Risse and Dr. Rémi Russbach.

As is customary, the meeting was divided into three parts, including the actual Round Table, which discussed the protection of prisoners of war and civilians, compliance with rules governing the conduct of hostilities, the implementation of international humanitarian law and the repression of violations, and reviewed certain problems that have arisen in recent conflicts, in particular the Gulf war. The meeting also included a day-long Red Cross and Red Crescent Symposium, and Refugee Day.

REFUGEE DAY

(3 September 1991)

The meeting was opened by the President of the International Institute of Humanitarian Law, Mr. Jovica Patnogic, who pointed out that it was the 40th anniversary of the adoption of the 1951 Convention relating to the Status of Refugees, before introducing the theme of Refugee Day: "The evolution of protection of refugees with regard to the 1951 Convention and the development of the international protection function of the United Nations High Commissioner for Refugees (UNHCR)".

Chaired by Mr. Michel Moussali, Director of UNHCR's Division of International Protection, this opening session took the form of a panel of experts. Ten experts took it in turn to show how important and relevant the provisions of the 1951 Convention and those of the 1967 United Nations Protocol relating to the Status of Refugees remain today, and how they can be adapted to current refugee problems.

The debate developed into a lively exchange of opinions on the refugee question, which is increasingly complicated by new migratory movements swelling the ranks of asylum seekers. On this subject, participants felt that it was up to the various governments to take measures to make the labour market more accessible to these migrants, while promoting development in the countries from which they come.

Speakers also stressed the need for specific analyses on the nature and origins of these migrations, and called for improved cooperation among the different United Nations organizations and non-governmental organizations.

What possible solutions are there to the various problems relating to refugee movements? Participants noted that the principle of international solidarity should continue to be applied to ensure that such solutions as voluntary repatriation, settlement in the country of first asylum, or resettlement in third countries remain open to refugees. But the important thing is to deal with the causes of refugee flows, and in particular the root causes which involve human rights violations. In this context, participants felt that certain "coordinating mechanisms" might be established within UNHCR, UNDP and FAO, as well as within other United Nations bodies and non-governmental organizations concerned either with human rights or with refugees.

RED CROSS AND RED CRESCENT SYMPOSIUM (4 September 1991)

The Red Cross and Red Crescent Symposium was devoted to a general presentation of the 26th International Conference of the Red Cross and Red Crescent, to the coordination of relief activities, and to humanitarian assistance in armed conflicts.

The introductory speeches by Dr. Ahmad Abu-Goura, Chairman of the Standing Commission of the Red Cross and Red Crescent, Mr. Mario Villarroel, President of the League of Red Cross and Red Crescent Societies, and ICRC President Cornelio Sommaruga all highlighted the importance of the 26th International Conference of the Red Cross and the Red Crescent. The Conference, they felt, should mark a new step forward in humanitarian "mobilization", striving to improve the effectiveness of humanitarian aid and protection while avoiding politicization; it would also be an opportunity to give new momentum to humanitarian law by rendering it even more universal and promoting its dissemination and application. Mr. Yves Sandoz outlined the main topics on the agenda of Commission I at the 26th Conference: respect for international humanitarian law, the law's implementation, its promotion and its reaffirmation, notably in relation to non-international armed conflicts. He also spoke of the importance of solving any problems to do with participation in advance of the Conference, to avoid politicization of the debates.

The League's Secretary General, Mr. Pär Stenbäck, expressed his concern about the politicization, indeed the militarization of humanitarian aid, before going on to outline the agenda for the Conference's Commission II relating to the development of National Societies, to natural and technological disasters, etc.

The role of the League in preventing natural and technological disasters, as well as the role of communications in disaster situations, was discussed by Mr. Peter Walker, head of the League's Disaster Policy Department, who spoke of the different levels of preparation and prevention, in their local, national and international dimensions. Particular stress was laid on the need to coordinate the activities of non-governmental organizations working in the field (sometimes competitively), and on the urgent need to improve international co-operation in the area of communications.

The last subject dealt with by the Symposium, humanitarian assistance in armed conflicts, was divided into two topics. The first concerned "The prohibition of famine as a method of combat" and was introduced by the ICRC's Chief Medical Officer, Dr. Rémi Russbach,

who referred to the conclusions of the seminar held in March 1991 in Annecy on the theme of "Famine and War"¹, conclusions which were the basis of a draft resolution to be submitted to the International Conference.

Participants in the subsequent discussion reaffirmed the provisions of humanitarian law concerning the prohibition of famine as a method of combat and the duty to allow the free passage of medical, food and clothing supplies for the victims. Blockades and their consequences for the civilian population, and the problems of access to victims and of supervision of aid distribution were extensively discussed. Many participants stressed the importance of contingency measures which the authorities of a country can take to be ready in case of famine, acknowledging at the same time that the question of supervision is a difficult one and requires further thought.

The second topic, concerning the right to humanitarian assistance, was discussed by Ms. Denise Plattner of the ICRC's Legal Division, with reference to the provisions of the Geneva Conventions and the Protocols additional thereto. She demonstrated that the right to assistance is recognized by international humanitarian law, and that an offer of relief consistent with the law does not constitute interference. She also stressed the conditions underlying humanitarian activities for the victims of armed conflict, notably impartiality and non-discrimination.

ROUND TABLE (5-6 September 1991)

1. Protection of civilians

The first Round Table topic was introduced by Prof. Salah El Din Amer (Egypt), Prof. Florentino Feliciano (Philippines) and Mr. Jean-Claude Risse (ICRC).

The protection of civilians, who suffered greatly during the Gulf war, was considered in the light of the Fourth Geneva Convention. This was applied in the following cases:

- protection of the population of occupied territories (i.e., Kuwait and the north and south of Iraq);

¹ See *International Review of the Red Cross* No. 284, September-October 1991, "Famine and War", pp. 549-557.

- general protection of Iraq's civilian population under Articles 13-26 of the Fourth Geneva Convention (as regards the international armed conflict), and under Article 3 common to the four Geneva Conventions (as regards the internal conflict);
- protection of foreigners inside Iraq.

Several instances of violation of the Fourth Convention were mentioned: in particular Iraq's refusal to allow the ICRC to enter Kuwait in order to carry out its mandate of protection and assistance; violations by the Iraqi armed forces inside Kuwait; the deportation of Kuwaiti civilians to Iraq; and the illegal detention of foreigners by Iraq.

Participants were reminded that the International Red Cross and Red Crescent Movement had been able to conduct a large-scale relief operation for displaced persons in the neighbouring States.

Finally, the Round Table focused its attention on the dramatic consequences, in both the short and the long term, of recent damage to the environment, and on the various legal measures applicable to ensure protection of the environment, particularly in times of armed conflict.

2. Protection of prisoners of war

Major Richard Austin (United Kingdom), Prof. Wolfram Karl (Austria), Mr. Fahmi Al Qaisy (Iraq) and Mr. Jean-Philippe Lavoyer (ICRC) took it in turn to discuss the provisions of the Third Convention as they apply to prisoners of war, and the nature of activities undertaken in behalf of prisoners of war from Kuwait and the coalition forces held in Iraq, and in behalf of Iraqi civilian and military personnel interned by certain coalition or neutral nations.

The difficulties encountered in applying the relevant provisions of the Third Convention were also discussed. The ICRC was given access to Kuwaiti prisoners in Iraq only at the beginning of March 1991, though since then some 6,300 prisoners and deported civilians have returned home with the help of the ICRC. Similarly, prisoners of war belonging to the coalition forces and held in Iraq could not be repatriated before March and April 1991.

More than 70,000 Iraqi prisoners of war held by the coalition forces were visited by the ICRC and have been repatriated with its help. As for Iraqi citizens, both civilian and military, interned by some of the coalition States, the ICRC was able to visit these in the United Kingdom and France. And finally, Iraqi soldiers interned by countries

which had declared themselves neutral, such as Turkey and Iran, also benefited from treatment as prisoners of war.

The debate highlighted certain cases involving non-compliance with the Third Convention, in particular failure to notify the ICRC of prisoners and its difficulty to obtain access to them, and the exposure of prisoners to public curiosity.

One unexpected consequence of the conflict was the repatriation under ICRC auspices of about 75,000 prisoners of war from the earlier Iran-Iraq conflict.

3. Conduct of hostilities

This subject, with its grave consequences, was a matter of lively debate.

The panelists included Mr. Kenneth Roth (USA), Lt. Col. Dominic McAlea (Canada), and Mr. Edward Cummings (USA), who discussed the rules governing the conduct of hostilities and pertaining to the protection of civilians. In view of certain violations, they placed particular emphasis on the following aspects:

- the need for acquainting the armed forces of all nations with international humanitarian law;
- the importance of certain rules, including the obligation to distinguish between combatants and non-combatants (civilians), the precautions that must be taken before launching attacks (e.g., fore-warning), the principle of proportionality, and the ban on causing superfluous injury and unnecessary suffering;
- the use of certain weapons, in particular indiscriminate weapons, and the choice to be made between high-precision weapons and less precise ones.

The debate showed just how difficult it is to reach conclusions as to the application of humanitarian law, in view of the difficulties of interpretation and the paucity of confirmed factual information. The discussion did however manage to promote a better understanding of this law and its applications.

4. Applicability and implementation of international humanitarian law and repression of breaches of humanitarian law

Introduced by Prof. Konstantin Obradovic (Yugoslavia), Dr. Bernard Kouchner (France) and Mr. Angelo Gnaedinger (ICRC), this subject and the ensuing debate found full consensus as to the funda-

mental importance that must be attached to implementation of international humanitarian law.

Despite this, participants agreed to look further at certain weaknesses in the implementation and monitoring mechanisms, in particular with regard to the Gulf conflict. Consequently, attention focused on various approaches for improving the implementation of international humanitarian law:

- the importance of the collective responsibility of States, stemming from Article 1 common to the Geneva Conventions, which stipulates that “the High Contracting Parties undertake to respect and to ensure respect for the Conventions in all circumstances”;
- the right to humanitarian assistance, a consequence of the increasing interdependence of all the world’s nations and an expression of international solidarity;
- the repression of violations of international humanitarian law through an international tribunal. It was furthermore pointed out that each State should assume its own responsibility for bringing IHL violations to an end;
- recourse to the International Fact-Finding Commission provided for in Article 90 of Protocol I and recently established;
- better coordination of the humanitarian agencies;
- the need to make humanitarian law more dynamic, to mobilize the media and through them public opinion, so as to promote knowledge of this body of law.

The ICRC’s role in implementing international humanitarian law was made clear, with emphasis on the fact that this role is particularly conducive to dialogue with all parties concerned.

* * *

At the closing session on 7 September, the conclusions of Refugee Day, the Red Cross and Red Crescent Symposium and the Round Table were presented to all delegates. Thereupon the participants, considering that many of the humanitarian law aspects of the Gulf conflict still require detailed analysis, suggested that an in-depth study be made of the application of international humanitarian law, so that the necessary lessons can be learned.

In conclusion, the International Institute of Humanitarian Law's prize for the promotion, dissemination and teaching of international humanitarian law was awarded to the Sofia Youth Club on *International Humanitarian Law*, represented by Ms. Christina Terzieva.

J. M.

Twenty-sixth International Conference of the Red Cross and Red Crescent postponed

The 26th International Conference of the Red Cross and Red Crescent, which was scheduled to take place in Budapest from 29 November to 6 December 1991, has been postponed. A press release was issued to this effect on 26 November by the Standing Commission of the Red Cross and Red Crescent:

"The Standing Commission of the Red Cross and Red Crescent regrets to announce that it has been forced to postpone the 26th International Conference of the Red Cross and Red Crescent due to the risk that political disagreement between governments on participation could jeopardize its outcome.

The International Red Cross and Red Crescent Movement stresses that it is bound by its Fundamental Principles to avoid becoming involved in political issues and deplores that the parties concerned have been unable to find a solution to the question of Palestinian participation.

The Red Cross and Red Crescent Movement will continue its meetings during the coming days in Budapest without the participation of governments to discuss the urgent humanitarian issues with which the international community is confronted".

Ratifications of and accessions to the Geneva Conventions of 12 August 1949 and their Additional Protocols of 8 June 1977

- The *Republic of Maldives* acceded, on 3 September 1991, to the two Protocols additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international (Protocol I) and non-international (Protocol II) armed conflicts, adopted in Geneva on 8 June 1977.

Pursuant to their provisions, the Protocols will come into force for the Republic of Maldives on 3 March 1992.

The Republic of Maldives is the **104th** State party to Protocol I and the **94th** to Protocol II.

- The *Republic of Malawi* acceded to the two Protocols on 7 October 1991. These will come into force for the Republic of Malawi on 7 April 1992.

The Republic of Malawi is the **105th** State party to Protocol I and the **95th** to Protocol II.

- *Brunei Darussalam* acceded to the four Geneva Conventions of 12 August 1949 and to their Additional Protocols on 14 October 1991. These will come into force for Brunei Darussalam on 14 April 1992.

Brunei Darussalam is the **167th** State party to the Geneva Conventions. It is the **106th** State party to Protocol I and the **96th** to Protocol II.

- The *Republic of Poland* ratified, on 23 October 1991, the two Protocols additional to the Geneva Conventions. These will come into force for the Republic of Poland on 23 April 1992.

The Republic of Poland is the **107th** State party to Protocol I and the **97th** to Protocol II.

- The *Republic of Hungary* deposited, on 23 September 1991, a declaration whereby, in accordance with Article 90 of Protocol I, it recognizes the competence of the International Fact-Finding

Commission in relation to any other High Contracting Party accepting the same obligation.

The Republic of Hungary is the **23rd** State to make this declaration concerning the International Fact-Finding Commission.

TWO DOCTORAL THESES ON NON-INTERNATIONAL ARMED CONFLICT

Two interesting doctoral theses¹, both dealing with a specific aspect of international humanitarian law as it relates to non-international armed conflict, have been written in recent years under the supervision of Dietrich Schindler at the law faculty of the University of Zurich.

In her work on the civil war in El Salvador, Gabriela M. Wyss attempts to measure the influence that Protocol II additional to the four Geneva Conventions has had on the conduct of the parties — government and insurgent — to that conflict. This is a welcome contribution to the rather meagre body of literature that gauges the implementation of international humanitarian law in specific conflicts. Another circumstance that makes Miss Wyss's study particularly interesting is that the conflict in El Salvador is the first case ever in which Protocol II was applicable in practice.

After explaining the basic concepts of international humanitarian law applicable to non-international situations, Miss Wyss discusses the process by which Protocol II came into existence. She makes a realistic assessment of the outcome, concluding that the text that was finally adopted "covers the fundamental ideas and needs of international humanitarian law". She adds that the consensus achieved among all states increases the Protocol's acceptability.

The author's account of the history of El Salvador and that country's bloody civil war will be of particular use to lawyers attempting to categorize the conflict in legal terms. The author comes to the firm conclusion that the conditions for application of Protocol II are fulfilled. As she demonstrates by quoting UN General Assembly resolutions, sources in El Salvador, etc., this view is shared by many others, including the Salvadoran government and insurgents who have recognized the Protocol's applicability. Whether they actually comply with the provisions of humanitarian law is another matter, but

¹ Gabriela M. Wyss, *Der nicht internationale bewaffnete Konflikt in El Salvador, Die Anwendung des Zusatzprotokolls II von 1977 zu den Genfer Abkommen von 1949*, (The Non-International Armed Conflict in El Salvador — The application of 1977 Protocol II additional to the 1949 Geneva Conventions), Zürcher Dissertation, Winterthur 1989, 224 pp.

Felix Rajower, *Das Recht des bewaffneten nicht internationalen Konflikts seit 1949*, (The Law of Non-International Armed Conflict since 1949), Zürcher Dissertation, Zürich 1990, 314 + XXVI pp.

Both theses are in German.

the author believes that both sides can in any case be credited with good intentions.

In a chapter entitled "Making armed conflict more humane", Miss Wyss describes the work of the ICRC delegation in El Salvador: visiting detainees, tracing, assisting particularly vulnerable groups, promoting knowledge of the law of Geneva, etc. The author bases her description largely on the ICRC's Annual Reports, once again demonstrating that it is perfectly possible to write a lively account of the ICRC's work on the basis of public sources.

The particularly interesting and well documented final chapter concerns the justice system in El Salvador. Miss Wyss pulls no punches and criticizes the system severely on a number of counts. But she also believes that Protocol II has helped to improve the legal procedures. It should be noted, however, that the provisions of humanitarian law apply equally to both sides and an examination of the "people's justice" administered by the insurgents would therefore also be appropriate.

This work, enhanced as it is by historical and sociological analyses, is an instructive and welcome presentation of international humanitarian law in action.

* * *

Felix Rajower's thesis on the law of non-international armed conflict since 1949 provides us with a complete presentation of the law as it applies to civil war. The author takes a very broad approach to the subject. He begins by considering the extent to which the law of non-international conflict contains an international law prohibition on the use of force, comparable with the UN Charter's ban on the threat or use of force in international relations. His remarks on the relationship between third states and individual parties to a conflict are thus also very valuable and certainly belong in a treatise on international humanitarian law. Most of his thesis, however, is taken up with an account of the law currently in force. Following the classic formula, he begins with a definition of war and ends with a detailed description of the rules applicable to internal conflict. These are principally Article 3, common to the four Geneva Conventions of 1949, and their Additional Protocol II of 8 June 1979.

Mr. Rajower's thesis is not only comprehensive but also incisively analytical and presented with remarkable clarity of expression; in short, it provides a good introduction to this difficult legal field. It is, moreover, the first time that the law of non-international armed conflict, including Protocol II, has been dealt with in a German-language publication.

In his analysis of the rules in force regarding civil war, the author often uses the law of international armed conflict as his starting point. In doing so, he has not always avoided the danger of extrapolating from the latter to reach conclusions as to the contents of the law of non-international conflict, in particular where a provision appears incomplete. Though this may produce the

sort of result that one would like to see, that result does not necessarily represent valid law. However desirable a rule may be, it cannot always be shown to be binding.

Mr. Rajower has opted for a theoretical approach in this work. He takes little interest in the practical implementation of the provisions he discusses, and therefore does not deal with the particular questions raised by the fact that in an internal conflict, one of the parties is not a State. Nonetheless, this work can be recommended as a good introductory survey of the law of non-international armed conflict.

The theses by Gabriela M. Wyss and Felix Rajower are evidence of the growing, and very gratifying, interest being shown by legal scholars in this branch of law.

Hans-Peter Gasser

LOS ESTADOS DE EXCEPCIÓN Y LOS DERECHOS HUMANOS EN AMÉRICA LATINA

States of exception and human rights in Latin America

Daniel Zovatto, Deputy Director of the Inter-American Institute for Human Rights (Instituto Interamericano de Derechos Humanos: IIDH) and Director of the Inter-American Centre for Assisting and Promoting the Electoral Process (Centro Interamericano de Asistencia y Promoción Electoral: CAPEL) deals in this book with states of exception or emergency and their impact on the effective implementation of human rights in Latin America.¹

Whenever the constitutional order has been disrupted, sometimes even within constitutionally democratic regimes, respect for human rights during the resulting states of exception is a particularly topical and significant issue. It is crucial to honour the guarantees and safeguards necessary for the exercise of fundamental rights so as to avoid undermining the monitoring mechanisms essential to enjoyment of those rights.

In this excellent work in five chapters, Dr. Zovatto begins by analysing the phenomenon of states of exception in Latin America, the conceptual approach which draws a distinction between restrictions on and suspension of human rights, and the most frequent forms of violation. He goes on to give a detailed analytical account of the rules of international law governing states of exception, and devotes two chapters to international monitoring mechanisms within the United Nations system and within the American regional system respectively. In the last chapter, the writer takes stock of the current situation and offers recommendations to make the international monitoring system more effective.

Despite the universal importance of the subject, a large proportion of the world's population having experienced living under a state of exception in the last few decades, Dr. Zovatto has purposely chosen to limit his analysis in two ways: first, he deals only with states of exception during periods of internal disturbances and tension, thus excluding those arising from armed conflict, *force majeure*, or any of the economic circumstances attendant upon underdevelopment; secondly, he has restricted his study to a given geographical region and time-frame, that is, Latin America between 1970 and 1989, in

¹ Daniel Zovatto G., *Los Estados de Excepción y los Derechos Humanos en América Latina*, Instituto Interamericano de Derechos Humanos, Editorial Jurídica Venezolana, Caracas, San José, 1990, 201 pp.

view of the prevalence of states of exception and the deterioration of the human rights situation during that period.

Latin American governments have generally invoked serious political crises caused by internal disturbances and tension as reasons for declaring states of exception. The author sets out to show that such declarations were usually unlawful from the standpoint of legal theory, rules and jurisprudence insofar as they did not meet the requirements of international human rights instruments. Furthermore, he draws attention to the risk involved, in that there was a diminution in the protection afforded by international human rights law while international humanitarian law lacked specific provisions to offset this deficiency. The last point can be explained by the fact that international humanitarian law does not *prima facie* or directly cover situations of internal disturbances and tension, although there may indeed be forms of humanitarian action applicable in such circumstances.

Within this framework, without going into detail on current attempts to promote the adoption of minimum humanitarian rules applicable in cases of internal disturbances and tension — which would provide material for another book — Dr. Zovatto does mention that it would be appropriate, under humanitarian law, to adopt *de lege ferenda* measures to make international monitoring mechanisms more effective in dealing with states of exception. Here the author stresses the need for an instrument to guarantee the fundamental rights of the individual during periods of internal disturbances and tension. The purpose of this instrument would be to strengthen the legal safeguards designed to protect human rights, to provide a means of resolving humanitarian problems arising in such circumstances, and to bolster the belief that, come what may, a basic minimum of humanity must be preserved.

We are sure that this book, given the wealth of information provided and the clarity and accuracy of the analyses, will prove most useful and will be highly appreciated by those interested in seeing the fundamental rights of the individual respected during states of exception.

María Teresa Dutli

CONTENTS

1991

Nos. 280-285

ARTICLES

Pages

UNITED NATIONS AND ICRC

- Christian Koenig:** Observer status for the International Committee of the Red Cross at the United Nations — A legal viewpoint 37

Special issue

IMPLEMENTATION OF INTERNATIONAL HUMANITARIAN LAW

- Introduction** 99

STATE SOVEREIGNTY AND IMPLEMENTATION OF INTERNATIONAL HUMANITARIAN LAW

- Gérard Niyungeko:** The implementation of international humanitarian law and the principle of State sovereignty 105

NATIONAL MEASURES TO IMPLEMENT INTERNATIONAL HUMANITARIAN LAW

National Measures to Implement International Humanitarian Law — Steps taken by the ICRC	134
Dieter Fleck: Implementing International Humanitarian Law — Problems and Priorities	140
Marc Offermans: The Belgian Interdepartmental Commission for Humanitarian Law	154

THE INTERNATIONAL FACT-FINDING COMMISSION

J. Ashley Roach: The International Fact-Finding Commission — Article 90 of Protocol I additional to the 1949 Geneva Conventions	167
Françoise Krill: The International Fact-Finding Commission — The role of the ICRC	190
The International Fact-Finding Commission — Steps taken by the depositary State	208
List of States (21) having declared that they recognize the competence of the International Fact-Finding Commission, under Article 90, para. 2a) of Additional Protocol I (as at 31 March 1991)	210

REPRESSION OF BREACHES OF THE LAW OF WAR

José Luis Fernández Flores: Repression of breaches of the law of war committed by individuals	247
George H. Aldrich: Compliance with International Humanitarian Law	294

PROTECTION OF VICTIMS OF WAR

World Campaign for the Protection of Victims of War	307
World Red Cross and Red Crescent Day 1991 — Joint Message of the League of Red Cross and Red Crescent Societies and the International Committee of the Red Cross	313

THE FUNDAMENTAL PRINCIPLES OF THE RED CROSS AND RED CRESCENT

Jean-Luc Blondel: The Fundamental Principles of the Red Cross and Red Crescent: Their origin and development	349
---	-----

SWITZERLAND'S HUMANITARIAN TRADITION

Milestones for the Swiss Confederation and the Swiss Red Cross . .	358
Philippe Bender: 125th anniversary of the Swiss Red Cross (1866-1991) — Thoughts on past and future	359
Kurt Sutter: Challenges facing the Swiss Red Cross at the dawn of a new millenium	371
700th anniversary of the Swiss Confederation — “ The Humanitarian Spirit of Geneva ”	385

Special issue

HEALTH PROTECTION AND MEDICAL ASSISTANCE IN DISASTER SITUATIONS

Introduction.	435
Peter Macalister-Smith: Protection of the civilian population and the prohibition of starvation as a method of warfare — Draft texts on international humanitarian assistance	440
Dr. Rémi Russbach: Health protection in armed conflicts	460
Dr. Rémi Russbach, Dr. Robin Charles Gray, Dr. Robin Michael Coupland: ICRC surgical activities	483
Alain Garachon: Thirteen years' experience in fitting war amputees with artificial limbs.	491
Dr. Pierre Perrin: Strategy for medical assistance in disaster situations	494
Dr. Pierre Perrin: Training medical personnel: HELP and SOS courses	505

Dr. Claude de Ville de Goyet: International health assistance in relief operations: preparing local health personnel to meet the challenge. . .	513
Dr. Bruce Dick: Community-based health care in disasters.	524

PROTECTION OF THE ENVIRONMENT

Antoine Bouvier: Protection of the natural environment in time of armed conflict	567
---	-----

CUSTOM IN INTERNATIONAL HUMANITARIAN LAW

Claude Bruderlein: Custom in international humanitarian law	579
--	-----

INTERNATIONAL COMMITTEE OF THE RED CROSS

The ICRC's humanitarian policy and operational activities	5
Frédéric Maurice and Jean de Courten: ICRC activities for refugees and displaced civilians	9
Conflict in the Middle East — ICRC appeals	22
Outline of legal aspects of the conflict in the Middle East	28
Yves Sandoz: The ICRC's responsibilities in connection with the Middle East conflict	211
Second Round Table of Experts on Battlefield Laser Weapons (Geneva, 9-11 April 1991)	
Address by the President of the ICRC	390
Proceedings of the Round Table	393
ICRC appeal for respect for international humanitarian law in Yugoslavia	398
Cornelio Sommaruga: The ICRC's humanitarian mandate as reflected in its work in Greece and throughout the world	596
Humanitarian meetings on conflict in Yugoslavia	610

News from Headquarters

Elections within the ICRC (January-February).	31
---	----

ICRC appoints two new members (March-April)	215
New executive structure	315
ICRC appoints new member (July-August)	399
Elections (November-December).	609

Missions by the President

Presidential missions (to Italy, Denmark, Switzerland)	32
Presidential missions (to Great Britain, France, Jordan, Switzerland, Italy, Brazil, the United States)	216
Presidential missions (to Luxembourg, the Federal Republic of Germany, Italy)	316
Presidential missions (to Greece, Italy, Canada, the United States)	400
Presidential mission: Headquarters agreement between the State of Kuwait and the ICRC	608

Visits to the ICRC

Official visits to Headquarters (Prince Hans Adam II and Princess Marie of Liechtenstein, General Chatichai Choonhavan, Dr. Sayid Mohammed Najibullah, Mr. Vaclav Havel)	31
--	----

Obituaries

Tribute to Frédéric Siordet	34
Death of Alexandre Hay	533
● Tribute to Alexandre Hay by the <i>ICRC President</i>	535
● In the words of Alexandre Hay	540

IN THE RED CROSS AND RED CRESCENT WORLD

Events within the Movement (Meetings, seminars, courses)

Statutory meetings of the Movement (Geneva, 16-24 October 1990)	53
--	----

Seminar for Asian Journalists (Kuala Lumpur, Malaysia, 14-15 November 1990)	56
XIVth International Festival of Red Cross and Health Films (Sofia, 25 May-1 June 1991)	404
Rezso Sztuchlik: Preparing for the 26th International Conference of the Red Cross and Red Crescent	542

National Red Cross and Red Crescent Societies

● <i>ACTIVITIES OF NATIONAL RED CROSS AND RED CRESCENT SOCIETIES</i>	
Els Marie Andrée Sundelöf and Ingrid Sandin: The Red Cross School of Nursing	49
The Albanian Red Cross yesterday and today	319
Silver Jubilee of the Kenya Red Cross Society:	
Henry Wahinya: 25 years at work... Protecting human life and dignity	322
Carol Duncan: 60 years of Red Cross in New Zealand	611
Anniversaries [of National Societies]	614
● <i>RECOGNITION OF NATIONAL SOCIETIES</i>	
Unification of the German Red Cross and of the Yemen Red Crescent Society	547
Recognition of the Solomon Islands Red Cross	548
Recognition of the Lithuanian Red Cross Society confirmed	615
Recognition of the Latvian Red Cross Society confirmed	616
● <i>REGIONAL CONFERENCES</i>	
Twenty-first Conference of the Arab Red Crescent and Red Cross Societies (Damascus, 25-27 August 1991)	617
Ninth Conference of Red Cross and Red Crescent Societies of the Balkan Countries (Athens, 22-25 September 1991)	620

Shôken Fund

Joint Commission of the Empress Shôken Fund — Seventieth distribution of income	407
---	-----

Obituary

Death of Yvonne Hentsch	327
-----------------------------------	-----

MISCELLANEOUS

Award of the Paul Reuter Prize	237
--	-----

Internal disturbances and tension:

Hans-Peter Gasser: New draft declaration on minimum humanitarian standards	328
---	-----

Declaration of Minimum Humanitarian Standards.	330
---	-----

Election of the members of the International Fact-Finding Commission	411
---	-----

New parties to the Conventions and the Protocols

Canada ratifies the Protocols	72
---	----

The Republic of Paraguay accedes to the Protocols	77
---	----

States party to the Protocols of 8 June 1977 (as at 31 December 1990)	78
--	----

Accession of the Kingdom of Bhutan to the Geneva Conventions	234
--	-----

The Federal Republic of Germany ratifies the Protocols	234
--	-----

Accession to the Protocols by Uganda	337
--	-----

Accession to the Protocols by Djibouti	337
--	-----

Chile ratifies the Protocols	338
--	-----

Australia ratifies the Protocols	558
--	-----

Declaration of succession of the Republic of Namibia to the Geneva Conventions	559
--	-----

Ratifications of and accessions to the Geneva Conventions of 12 August 1949 and their Additional Protocols of 8 June 1977: Republic of Maldives, Republic of Malawi, Brunei Darussalam, Republic of Poland, Declaration of the Republic of Hungary	635
--	-----

Meetings, courses, seminars

Fifteenth Round Table of the International Institute of Humanitarian Law (San Remo, 4-8 September 1990)	57
First International Conference on Burns and Fire Disasters (Palermo, Sicily, 25-28 September 1990)	69
Seminar on the Implementation of International Humanitarian Law (Sofia, 20-22 September 1990)	223
Famine and War (<i>Alain Mourey</i>)	549
Regional Seminar on national measures to implement international humanitarian law (San José, Costa Rica, 18-21 June 1991)	623
Sixteenth Round Table of the International Institute of Humanitarian Law (San Remo, 3-7 September 1991)	627
Twenty-sixth International Conference of the Red Cross and Red Crescent postponed	634

BOOKS AND REVIEWS

Children in War (<i>Laurent Marti and Jean-Pierre Gaume</i> , eds.)	83
Arms Control at Sea (<i>Rear Admiral J.R. Hill</i>)	85
<i>Humanitäres Völkerrecht — Informationsschriften — A new German-language periodical on humanitarian law</i>	86
National Implementation of International Humanitarian Law (<i>Eds. Michael Bothe, Thomas Kurzidem, Peter Macalister-Smith</i>)	238
International Humanitarian Law — The Regulation of Armed Conflicts (<i>Hilaire McCoubrey</i>)	239
Bedeutung einer Kodifikation für das allgemeine Völkerrecht, mit besonderer Betrachtung der Regeln zum Schutze der Zivilbevölkerung vor den Auswirkungen von Feindseligkeiten (<i>The significance of codification for general international law with particular attention to the rules for the protection of civilians against the effects of hostilities</i>) (<i>Marco Sassòli</i>)	339
Casualties of Conflict — Report for the World Campaign for the Protection of Victims of War (<i>Christer Ahlström</i> with contribution by <i>Kjell-Åke Nordquist</i>)	342

Préludes et pionniers — Les précurseurs de la Croix-Rouge, 1840-1860 (<i>The Precursors of the Red Cross</i>) (Eds. Roger Durand and Jacques Meurant in collaboration with Youssef Cassis)	413
“I have done my duty” — Florence Nightingale in the Crimean War, 1854-1856 (Sue M. Goldie , ed.)	419
La Planète des Victimes (<i>Planet of Victims</i>) (Michel Goeldlin)	421
Jornadas de Derecho Internacional Humanitario (<i>Round Tables on International Humanitarian Law</i>)	423
Publications received	426
Disaster Medicine — New Aspects of Disaster Medicine (Eds. Muneo Ohta , Takashi Ukai , Yasuhiro Yamamoto) — Multilingual Dictionary of Disaster Medicine and International Relief (S.W.A. Gunn)	560
Two doctoral theses on non-international conflict: Der nicht internationale bewaffnete Konflikt in El Salvador (<i>The Non-International Armed Conflict in El Salvador — The application of 1977 Protocol II additional to the 1949 Geneva Conventions</i>) (Gabriela M. Wyss) and Das Recht des bewaffneten nicht internationalen Konflikts seit 1949 (<i>The Law of Non-International Armed Conflict since 1949</i>) (Felix Rajower)	637
Los Estados de Excepción y los Derechos Humanos en América Latina (<i>States of Exception and Human Rights in Latin America</i>) (Daniel Zovatto G.)	640
Contents 1991	642

ADDRESSES OF NATIONAL RED CROSS AND RED CRESCENT SOCIETIES

- AFGHANISTAN (Democratic Republic of) — Afghan Red Crescent Society, Puli Hartan, *Kabul*.
- ALBANIA (Republic of) — Albanian Red Cross, Rue Qamil Guranjaku No. 2, *Tirana*.
- ALGERIA (People's Democratic Republic of) — Algerian Red Crescent, 15 bis, boulevard Mohamed V, *Algiers*.
- ANGOLA — Cruz Vermelha de Angola, Av. Hoji Ya Henda 107, 2. andar, *Luanda*.
- ARGENTINA — The Argentine Red Cross, H. Yrigoyen 2068, 1089 Buenos Aires.
- AUSTRALIA — Australian Red Cross Society, 206, Clarendon Street, *East Melbourne* 3002.
- AUSTRIA — Austrian Red Cross, Wiedner Hauptstrasse 32, Postfach 39, A-1041, *Vienna* 4.
- BAHAMAS — The Bahamas Red Cross Society, P.O. Box N-8331, *Nassau*.
- BAHRAIN — Bahrain Red Crescent Society, P.O. Box 882, *Manama*.
- BANGLADESH — Bangladesh Red Crescent Society, 684-686, Bara Magh Bazar, Dhaka-1217, G.P.O. Box No. 579, *Dhaka*.
- BARBADOS — The Barbados Red Cross Society, Red Cross House, Jemmotts Lane, *Bridgetown*.
- BELGIUM — Belgian Red Cross, 98, chaussée de Vleurgat, 1050 *Brussels*.
- BELIZE — Belize Red Cross Society, P.O. Box 413, *Belize City*.
- BENIN (Republic of) — Red Cross of Benin, B.P. No. 1, *Porto-Novo*.
- BOLIVIA — Bolivian Red Cross, Avenida Simón Bolívar, 1515, *La Paz*.
- BOTSWANA — Botswana Red Cross Society, 135 Independence Avenue, P.O. Box 485, *Gaborone*.
- BRAZIL — Brazilian Red Cross, Praça Cruz Vermelha No. 10-12, *Rio de Janeiro*.
- BULGARIA — Bulgarian Red Cross, 1, Boul. Biruzov, 1527 *Sofia*.
- BURKINA FASO — Burkina Be Red Cross Society, B.P. 340, *Ouagadougou*.
- BURUNDI — Burundi Red Cross, rue du Marché 3, P.O. Box 324, *Bujumbura*.
- CAMEROON — Cameroon Red Cross Society, rue Henri-Dunant, P.O.B 631, *Yaoundé*.
- CANADA — The Canadian Red Cross Society, 1800 Alta Vista Drive, *Ottawa*, Ontario K1G 4J5.
- CAPE-VERDE (Republic of) — Cruz Vermelha de Cabo Verde, Rua Unidade-Guiné-Cabo Verde, P.O. Box 119, *Praia*.
- CENTRAL AFRICAN REPUBLIC — Central African Red Cross Society, B.P. 1428, *Bangui*.
- CHAD — Red Cross of Chad, B.P. 449, *N'Djamena*.
- CHILE — Chilean Red Cross, Avenida Santa Maria No. 0150, Correo 21, Casilla 246-V., *Santiago de Chile*.
- CHINA (People's Republic of) — Red Cross Society of China, 53, Gannien Hutong, *Beijing*.
- COLOMBIA — Colombian Red Cross Society, Avenida 68, No. 66-31, Apartado Aéreo 11-10, *Bogotá D.E.*
- CONGO (People's Republic of the) — Croix-Rouge congolaise, place de la Paix, B.P. 4145, *Brazzaville*.
- COSTA RICA — Costa Rica Red Cross, Calle 14, Avenida 8, Apartado 1025, *San José*.
- CÔTE D'IVOIRE — Croix-Rouge de Côte d'Ivoire, B.P. 1244, *Abidjan*.
- CUBA — Cuban Red Cross, Calle Prado 206, Colón y Trocadero, *Habana* 1.
- THE CZECH AND SLOVAK FEDERAL REPUBLIC — Czechoslovak Red Cross, Thunovská 18, 118 04 *Prague* 1.
- DENMARK — Danish Red Cross, Dag Hammarskjölds Allé 28, Postboks 2600, 2100 *København Ø*.
- DJIBOUTI — Société du Croissant-Rouge de Djibouti, B.P. 8, *Djibouti*.
- DOMINICA — Dominica Red Cross Society, P.O. Box 59, *Roseau*.
- DOMINICAN REPUBLIC — Dominican Red Cross, Apartado postal 1293, *Santo Domingo*.
- ECUADOR — Ecuadorean Red Cross, calle de la Cruz Roja y Avenida Colombia, *Quito*.
- EGYPT (Arab Republic of) — Egyptian Red Crescent Society, 29, El Galaa Street, *Cairo*.
- EL SALVADOR — Salvadorean Red Cross Society, 17C. Pte y Av. Henri Dunant, *San Salvador*, Apartado Postal 2672.
- ETHIOPIA — Ethiopian Red Cross Society, Ras Desta Damtew Avenue, *Addis Ababa*.
- FIJI — Fiji Red Cross Society, 22 Gorrie Street, P.O. Box 569, *Suva*.
- FINLAND — Finnish Red Cross, Tehtaankatu, 1 A. Box 168, 00141 *Helsinki* 14115.
- FRANCE — French Red Cross, 1, place Henry-Dunant, F-75384 *Paris*, CEDEX 08.
- GAMBIA — The Gambia Red Cross Society, P.O. Box 472, *Banjul*.
- GERMANY, FEDERAL REPUBLIC OF — German Red Cross, Friedrich-Erbert-Allee 71, 5300, *Bonn* 1, Postfach 1460 (D.B.R.).
- GHANA — Ghana Red Cross Society, National Headquarters, Ministries Annex A3, P.O. Box 835, *Accra*.
- GREECE — Hellenic Red Cross, rue Lycavittou, 1, *Athens* 10672.
- GRENADA — Grenada Red Cross Society, P.O. Box 221, *St George's*.
- GUATEMALA — Guatemalan Red Cross, 3.ª Calle 8-40, Zona 1, *Ciudad de Guatemala*.
- GUINEA — The Guinean Red Cross Society, P.O. Box 376, *Conakry*.
- GUINEA-BISSAU — Sociedad Nacional da Cruz Vermelha de Guiné-Bissau, rua Justino Lopes N.º 22-B, *Bissau*.
- GUYANA — The Guyana Red Cross Society, P.O. Box 10524, *Eve Leary, Georgetown*.
- HAITI — Haitian National Red Cross Society, place des Nations Unies, (Bicentenaire), B.P. 1337, *Port-au-Prince*.
- HONDURAS — Honduran Red Cross, 7.ª Calle, 1.ª y 2.ª Avenidas, *Comayagüela D.M.*

- HUNGARY (The Republic of) — Hungarian Red Cross, V. Arany János utca, 31, *Budapest 1367*. Mail Add.: 1367 *Budapest 51*. Pf. 121.
- ICELAND — Icelandic Red Cross, Raudararstigur 18, 105 *Reykjavik*.
- INDIA — Indian Red Cross Society, 1, Red Cross Road, *New Delhi 110001*.
- INDONESIA — Indonesian Red Cross Society, Il Jend Gatot subroto Kar. 96, Jakarta Selatan 12790, P.O. Box 2009, *Jakarta*.
- IRAN — The Red Crescent Society of the Islamic Republic of Iran, Avenue Ostad Nejatollahi, *Tehran*.
- IRAQ — Iraqi Red Crescent Society, Mu'ari Street, Mansour, *Baghdad*.
- IRELAND — Irish Red Cross Society, 16, Merrion Square, *Dublin 2*.
- ITALY — Italian Red Cross, 12, via Toscana, 00187 *Rome*.
- JAMAICA — The Jamaica Red Cross Society, 76, Arnold Road, *Kingston 5*.
- JAPAN — The Japanese Red Cross Society, 1-3, Shiba-Daimon, I-chome, Minato-Ku, *Tokyo 105*.
- JORDAN — Jordan National Red Crescent Society, P.O. Box 10001, *Amman*.
- KENYA — Kenya Red Cross Society, P.O. Box 40712, *Nairobi*.
- KOREA (Democratic People's Republic of) — Red Cross Society of the Democratic People's Republic of Korea, Ryonhwa 1, Central District, *Pyeongyang*.
- KOREA (Republic of) — The Republic of Korea National Red Cross, 32-3Ka, Nam San Dong, Choong-Ku, *Seoul 100-043*.
- KUWAIT — Kuwait Red Crescent Society, (provisional address) Al Salmiya, *Kuwait*.
- LAO PEOPLE'S DEMOCRATIC REPUBLIC — Lao Red Cross, B.P. 650, *Vientiane*.
- LATVIA — Latvian Red Cross Society, 28, Skolas Street, 226 300 *Riga*.
- LEBANON — Lebanese Red Cross, rue Spears, *Beirut*.
- LESOTHO — Lesotho Red Cross Society, P.O. Box 366, *Maseru 100*.
- LIBERIA — Liberian Red Cross Society, National Headquarters, 107 Lynch Street, 1000 *Monrovia 20*, West Africa.
- LIBYAN ARAB JAMAHIRIYA — Libyan Red Crescent, P.O. Box 541, *Benghazi*.
- LIECHTENSTEIN — Liechtenstein Red Cross, Heiligkreuz, 9490 *Vaduz*.
- LITHUANIA — Lithuanian Red Cross Society, Gedimino Ave 3a, 232 600 *Vilnius*.
- LUXEMBOURG — Luxembourg Red Cross, Parc de la Ville, B.P. 404, *Luxembourg 2*.
- MADAGASCAR — Malagasy Red Cross Society, 1, rue Patrice Lumumba, *Antananarivo*.
- MALAWI — Malawi Red Cross Society, Conforzi Road, P.O. Box 983, *Lilongwe*.
- MALAYSIA — Malaysian Red Crescent Society, JKR 32 Jalan Nipah, off Jalan Ampang, *Kuala Lumpur 55000*.
- MALI — Mali Red Cross, B.P. 280, *Bamako*.
- MAURITANIA — Mauritanian Red Crescent, B.P. 344, avenue Gamal Abdel Nasser, *Nouakchott*.
- MAURITIUS — Mauritius Red Cross Society, Ste Thérèse Street, *Curepipe*.
- MEXICO — Mexican Red Cross, Calle Luis Vives 200, Col. Polanco, *México 10*, Z.P. 11510.
- MONACO — Red Cross of Monaco, 27 boul. de Suisse, *Monte Carlo*.
- MONGOLIA — Red Cross Society of Mongolia, Central Post Office, Post Box 537, *Ulan Bator*.
- MOROCCO — Moroccan Red Crescent, B.P. 189, *Rabat*.
- MOZAMBIQUE — Cruz Vermelha de Moçambique, Caixa Postal 2986, *Maputo*.
- MYANMAR (The Union of) — Myanmar Red Cross Society, 42, Strand Road, *Yangon*.
- NEPAL — Nepal Red Cross Society, Tahachal Kalimati, P.B. 217, *Kathmandu*.
- NETHERLANDS — The Netherlands Red Cross, P.O. Box 28120, 2502 *KC The Hague*.
- NEW ZEALAND — The New Zealand Red Cross Society, Red Cross House, 14 Hill Street, *Wellington 1* (P.O. Box 12-140, *Wellington Thorndon*).
- NICARAGUA — Nicaraguan Red Cross, Apartado 3279, *Managua D.N.*
- NIGER — Red Cross Society of Niger, B.P. 11386, *Niamey*.
- NIGERIA — Nigerian Red Cross Society, 11 Eko Akete Close, off St. Gregory's Rd., P.O. Box 764, *Lagos*.
- NORWAY — Norwegian Red Cross, P.O. Box 6875, St. Olavspl. N-0130 *Oslo 1*.
- PAKISTAN — Pakistan Red Crescent Society, National Headquarters, Sector H-8, *Islamabad*.
- PANAMA — Red Cross Society of Panama, Apartado Postal 668, *Panamá 1*.
- PAPUA NEW GUINEA — Papua New Guinea Red Cross Society, P.O. Box 6545, *Boroko*.
- PARAGUAY — Paraguayan Red Cross, Brasil 216, esq. José Berges, *Asunción*.
- PERU — Peruvian Red Cross, Av. Camino del Inca y Nazarenas, Urb. Las Gardenias — Surco — Apartado 1534, *Lima*.
- PHILIPPINES — The Philippine National Red Cross, Bonifacio Drive, Port Area, P.O. Box 280, *Manila 2803*.
- POLAND (The Republic of) — Polish Red Cross, Mokotowska 14, 00-950 *Warsaw*.
- PORTUGAL — Portuguese Red Cross, Jardim 9 Abril, 1 a 5, 1293 *Lisbon*.
- QATAR — Qatar Red Crescent Society, P.O. Box 5449, *Doha*.
- ROMANIA — Red Cross of Romania, Strada Biserica Amzei, 29, *Bucarest*.
- RWANDA — Rwandese Red Cross, B.P. 425, *Kigali*.
- SAINT LUCIA — Saint Lucia Red Cross, P.O. Box 271, *Castries St. Lucia, W. I.*
- SAINT VINCENT AND THE GRENADINES — Saint Vincent and the Grenadines Red Cross Society, P.O. Box 431, *Kingstown*.
- SAN MARINO — Red Cross of San Marino, Comité central, *San Marino*.
- SAO TOME AND PRINCIPE — Sociedade Nacional da Cruz Vermelha de São Tomé e Príncipe, C.P. 96, *São Tomé*.
- SAUDI ARABIA — Saudi Arabian Red Crescent Society, *Riyadh 11129*.
- SENEGAL — Senegalese Red Cross Society, Bd Franklin-Roosevelt, P.O.B. 299, *Dakar*.
- SIERRA LEONE — Sierra Leone Red Cross Society, 6, Liverpool Street, P.O.B. 427, *Freetown*.
- SINGAPORE — Singapore Red Cross Society, Red Cross House 15, Penang Lane, *Singapore 0923*.

- SOLOMON ISLANDS — The Solomon Islands Red Cross Society, P.O. Box 187, *Honiara*.
- SOMALIA (Democratic Republic of) — Somali Red Crescent Society, P.O. Box 937, *Mogadishu*.
- SOUTH AFRICA — The South African Red Cross Society, Essanby House 6th Floor, 175 Jeppe Street, P.O.B. 8726, *Johannesburg 2000*.
- SPAIN — Spanish Red Cross, Eduardo Dato, 16, *Madrid 28010*.
- SRI LANKA (Dem. Soc. Rep. of) — The Sri Lanka Red Cross Society, 106, Dharmapala Mawatha, *Colombo 7*.
- SUDAN (The Republic of the) — The Sudanese Red Crescent, P.O. Box 235, *Khartoum*.
- SURINAME — Suriname Red Cross, Gravenberchstraat 2, Postbus 2919, *Paramaribo*.
- SWAZILAND — Baphalali Swaziland Red Cross Society, P.O. Box 371, *Mbabane*.
- SWEDEN — Swedish Red Cross, Box 27 316, *102-54 Stockholm*.
- SWITZERLAND — Swiss Red Cross, Rainmattstrasse 10, B.P. 2699, *3001 Berne*.
- SYRIAN ARAB REPUBLIC — Syrian Arab Red Crescent, Bd Mahdi Ben Barake, *Damascus*.
- TANZANIA — Tanzania Red Cross National Society, Upanga Road, P.O.B. 1133, *Dar es Salaam*.
- THAILAND — The Thai Red Cross Society, Paribatra Building, Central Bureau, Rama IV Road, *Bangkok 10330*.
- TOGO — Togolese Red Cross, 51, rue Boko Soga, P.O. Box 655, *Lomé*.
- TONGA — Tonga Red Cross Society, P.O. Box 456, *Nuku' Alofa, South West Pacific*.
- TRINIDAD AND TOBAGO — The Trinidad and Tobago Red Cross Society, P.O. Box 357, *Port of Spain, Trinidad, West Indies*.
- TUNISIA — Tunisian Red Crescent, 19, rue d'Angleterre, *Tunis 1000*.
- TURKEY — The Turkish Red Crescent Society, Genel Baskanligi, Karanfil Sokak No. 7, 06650 *Kizilay-Ankara*.
- UGANDA — The Uganda Red Cross Society, Plot 97, Buganda Road, P.O. Box 494, *Kampala*.
- UNITED ARAB EMIRATES — The Red Crescent Society of the United Arab Emirates, P.O. Box No. 3324, *Abu Dhabi*.
- UNITED KINGDOM — The British Red Cross Society, 9, Grosvenor Crescent, *London, S.W.1X. 7EJ*.
- USA — American Red Cross, 17th and D Streets, N.W., *Washington, D.C. 20006*.
- URUGUAY — Uruguayan Red Cross, Avenida 8 de Octubre 2990, *Montevideo*.
- U.S.S.R. — The Alliance of Red Cross and Red Crescent Societies of the U.S.S.R., 1, Tcheremushkinskii proezd 5, *Moscow, 117036*.
- VENEZUELA — Venezuelan Red Cross, Avenida Andrés Bello, N.º 4, Apartado, 3185, *Caracas 1010*.
- VIET NAM (Socialist Republic of) — Red Cross of Viet Nam, 68, rue Ba-Triêu, *Hanoi*.
- WESTERN SAMOA — Western Samoa Red Cross Society, P.O. Box 1616, *Apia*.
- YEMEN (Republic of) — Yemeni Red Crescent Society, P.O. Box 1257, *Sana'a*.
- YUGOSLAVIA — Red Cross of Yugoslavia, Simina ulica broj 19, *11000 Belgrade*.
- ZAIRE — Red Cross Society of the Republic of Zaire, 41, av. de la Justice, Zone de la Gombe, B.P. 1712, *Kinshasa*.
- ZAMBIA — Zambia Red Cross Society, P.O. Box 50 001, 2837 Saddam Hussein Boulevard, Longacres, *Lusaka*.
- ZIMBABWE — The Zimbabwe Red Cross Society, P.O. Box 1406, *Harare*.

JUST PUBLISHED

**NATIONAL MEASURES
TO IMPLEMENT INTERNATIONAL
HUMANITARIAN LAW**

**RESOLUTION V OF THE 25th INTERNATIONAL CONFERENCE
OF THE RED CROSS
(Geneva, 1986)**

Written representations by the
International Committee of the Red Cross

This brochure contains all the written representations made by the ICRC to governments and National Societies as a follow-up to Resolution V of the 25th International Conference of the Red Cross (Geneva, 1986), entitled "National measures to implement international humanitarian law":

- Circular letters of 28 April 1988 (as reproduced in the *International Review of the Red Cross*, March-April 1988 issue);
- "Interim report" sent with circular letters of 15 August 1989 (as reproduced in the *International Review of the Red Cross*, March-April 1991 issue);
- "Proposals aimed at helping States adopt national measures to implement international humanitarian law. ICRC's compilation", document sent in the form of notes verbales and circular letters of 18 January 1991.

In addition, there is a report entitled "Implementation of international humanitarian law. National measures" (doc. C.I/4.1/1) and its annex "Replies received from States to the ICRC's written representations concerning national measures to implement international humanitarian law". This report was prepared by the ICRC for the 26th International Conference of the Red Cross and Red Crescent (Budapest, 1991).

The brochure is available in *English, French, Spanish and Arabic*.

ARTICLES SUBMITTED FOR PUBLICATION IN THE *INTERNATIONAL REVIEW OF THE RED CROSS*

The *International Review of the Red Cross* invites readers to submit articles relating to the various humanitarian concerns of the International Red Cross and Red Crescent Movement. These will be considered for publication on the basis of merit and relevance to the topics to be covered during the year.

- Manuscripts will be accepted in *English, French, Spanish, Arabic* or *German*.

Texts should be typed, double-spaced, and no longer than 25 pages (or 6 000 words). Please send diskettes if possible.

- Footnotes (*no more than 40*) should be numbered superscript in the main text. They should be typed, double-spaced, and grouped at the end of the article.
- Bibliographical references should include at least the following details: (a) for books, the author's initials and surname (in that order), book title (underlined), place of publication, publishers and year of publication (in that order), and page number(s) referred to (p. or pp.); (b) for articles, the author's initials and surname, article title in inverted commas, title of periodical (underlined), place of publication, periodical date, volume and issue number, and page number(s) referred to (p. or pp.). The titles of articles, books and periodicals should be given in the original language of publication.
- Unpublished manuscripts will not be returned.
- Published works sent to the editor will be mentioned in the list of publications received and, if considered appropriate, reviewed.
- Manuscripts, correspondence and requests for permission to reproduce texts appearing in the *Review* should be addressed to the editor.

Articles, studies, and other signed texts from non-ICRC sources published in the *Review* reflect the views of the author alone and not necessarily those of the ICRC.

**READ AND ENCOURAGE OTHERS TO READ
THE INTERNATIONAL REVIEW
OF THE RED CROSS**

Help increase its circulation

SUBSCRIPTION FORM

I should like to subscribe to the *International Review of the Red Cross*
for 1 year from (date) _____

☐ English ☐ Spanish ☐ French
☐ Arabic ☐ German (selected articles)

Name _____ First name _____

Organization _____

Profession ou function _____

Address _____

Country _____

Please cut out or photocopy and mail to:

International Review of the Red Cross
19, av. de la Paix
CH-1202 Geneva

English, French, Spanish and Arabic editions:

1-year subscription (6 issues): Sw. frs. 30 or US\$ 18.
(single copy Sw. frs. 5)

German edition:

1-year subscription (6 issues): Sw. frs. 10 or US\$ 6.
(single copy Sw. frs. 2)

Postal cheque account No. 12-1767-1 Geneva

Bank account No. 129.986.0, Swiss Bank Corporation, Geneva

Specimen copy on request

Date _____ Signature _____

The ***International Review of the Red Cross*** is the official publication of the International Committee of the Red Cross. It was first published in 1869 under the title "Bulletin international des Sociétés de secours aux militaires blessés", and then "Bulletin international des Sociétés de la Croix-Rouge".

The ***International Review of the Red Cross*** is a forum for reflection and comment and serves as a reference work on the mission and guiding principles of the International Red Cross and Red Crescent Movement. It is also a specialized journal in the field of international humanitarian law and other aspects of humanitarian endeavour.

As a chronicle of the international activities of the Movement and a record of events, the ***International Review of the Red Cross*** is a constant source of information and maintains a link between the components of the International Red Cross and Red Crescent Movement.

The ***International Review of the Red Cross*** is published every two months, in four main editions:

French: REVUE INTERNATIONALE DE LA CROIX-ROUGE (since October 1869)

English: INTERNATIONAL REVIEW OF THE RED CROSS (since April 1961)

Spanish: REVISTA INTERNACIONAL DE LA CRUZ ROJA (since January 1976)

Arabic: المجلة الدولية للصليب الأحمر

(since May-June 1988)

Selected articles from the main editions have also been published in German under the title *Auszüge* since January 1950.

EDITOR: Jacques Meurant, D. Pol. Sci.

ADDRESS: International Review of the Red Cross
19, avenue de la Paix
1202 - Geneva, Switzerland

SUBSCRIPTIONS: one year, 30 Swiss francs or US\$ 18
single copy, 5 Swiss francs

Postal cheque account No. 12 - 1767-1 Geneva

Bank account No. 129.986.0, Swiss Bank Corporation, Geneva

The **International Committee of the Red Cross (ICRC)**, together with the League of Red Cross and Red Crescent Societies and the 150 recognized National Red Cross and Red Crescent Societies, is one of the three components of the International Red Cross and Red Crescent Movement.

An independent humanitarian institution, the ICRC is the founding body of the Red Cross. As a neutral intermediary in case of armed conflict or disturbances, it endeavours on its own initiative or on the basis of the Geneva Conventions to protect and assist the victims of international and civil wars and of internal troubles and tensions, thereby contributing to peace in the world.

**INTERNATIONAL
REVIEW**

**Protection of the natural environment
in time of armed conflict**

Custom in international humanitarian law

**The ICRC's humanitarian policy
and operational activities**